

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

JOHN HANCOCK LIFE INSURANCE
COMPANY,

Plaintiff/Counterclaim Defendant,

v.

VESTMONT LIMITED PARTNERSHIP,
VESTMONT LIMITED PARTNERSHIP II,
VESTMONT LIMITED PARTNERSHIP III,
and VESTERRA CORPORATION d/b/a
MONTGOMERY SQUARE PARTNERSHIP,

Defendants/Counterclaim Plaintiffs.

CIVIL ACTION NO. 05-11614-WGY

AFFIDAVIT OF PAUL D. POPEO, ESQ.

I, Paul D. Popeo, on oath, depose and say as follows:

1. I am a partner in the law firm of Choate, Hall & Stewart, LLP, and I serve as co-counsel to plaintiff John Hancock Life Insurance Company ("John Hancock" or "Hancock") in this action. I submit this affidavit in support of John Hancock's Motion For Reconsideration Of March 30, 2006 Court Order Precluding Certain Testimony (the "Motion for Reconsideration"). The statements contained in this affidavit are based upon my own personal knowledge.

2. Defendants Vestmont Limited Partnership, *et al.* (collectively, "Montgomery Partners" or the "Defendants") have noticed and taken the depositions of seven present or former John Hancock employees in this action. They are:

(a) *Mr. John Ferrie* - The Regional Vice President of John Hancock's Blue Bell, Pennsylvania office and a 16-year veteran of Hancock's Real Estate Finance Group, who personally originated and helped negotiate the Loan Commitment;

(b) *Mr. Timothy Malik* - An Investment Officer (now Assistant Vice President) at John Hancock's Boston, Massachusetts office and a 19-year veteran of Hancock's Real Estate Finance Group, who was primarily responsible for underwriting the Loan contemplated in the Loan Commitment;

(c) *Mr. David Henderson* - A former Senior Investment Officer at John Hancock's Boston, Massachusetts office and an 8-year veteran of Hancock's Real Estate Finance Group, who served as Mr. Malik's immediate supervisor and, in that capacity, personally considered and approved the Loan Commitment in August 2004;

(d) *Mr. Barry Nectow* - A former Vice President at John Hancock's Boston, Massachusetts office and an 16-year veteran of Hancock's Real Estate Finance Group, who served as Mr. Henderson's immediate supervisor and, in that capacity, personally considered and approved the Loan Commitment in August 2004;

(e) *Ms. Patricia Coyne* - An Investment Officer at John Hancock's Boston, Massachusetts office and an 13-year veteran of Hancock's Real Estate Finance Group, who personally considered and approved the Loan Commitment in August 2004, and who has extensive experience and familiarity with Hancock's commercial loan policies and procedures;

(f) *Mr. Ivor Thomas* - The Senior Vice President in charge of John Hancock's commercial mortgage operations after the merger between John Hancock and Manulife Financial in April 2004 and a 32-year veteran of the commercial lending industry, who personally considered and approved the Loan Commitment in August 2004; and

(g) *Ms. Joan Uzdavinis* - An Assistant Vice President in John Hancock's Portfolio Management Group and a 26-year veteran of the investment finance and pension industries, who was designated by Hancock to testify concerning the financial topics contained in the Defendants' Rule 30(b)(6) Notice, including Hancock's resulting losses.

3. True copies of the full minuscrit versions of the transcripts of the Malik, Ferrie, Henderson, Nectow, Coyne and Uzdavinis depositions are appended to this affidavit as Exhibits A through E, and G for the convenience of the court. The final transcript of

Mr. Thomas' deposition had not arrived as of the date of this affidavit. A true copy of the rough transcript of Mr. Thomas' deposition is appended to this affidavit as Exhibit F.

4. Montgomery Partners deposed Mr. Malik on January 27, 2006, and Mr. Ferrie on February 1, 2006. On the same day that Mr. Ferrie's deposition concluded, Montgomery Partners served John Hancock with an omnibus Rule 30(b)(6) Notice of Deposition listing many of the same topics already covered at the Malik and Ferrie depositions, as well as certain additional topics. Shortly thereafter, Montgomery Partners issued a combined Notice of Deposition for Messrs. Henderson, Nectow and Thomas and Ms. Coyne.

5. Counsel for John Hancock worked cooperatively with counsel for Montgomery Partners to arrange mutually acceptable dates for the various depositions that had been noticed on both sides. In the course of making those arrangements, I personally notified Montgomery Partners that John Hancock: (a) would designate Mr. Henderson and Ms. Coyne to address various topics in the Defendants' Rule 30(b)(6) Notice of Deposition concerning Hancock's commercial lending practices, policies and procedures to the extent that those topics had not already been covered by Messrs. Malik and Ferrie at their depositions; (b) would produce an additional witness (Ms. Uzdavinis) to testify concerning the financial topics contained in the Defendants' Rule 30(b)(6) Notice, including Hancock's resulting losses; and (c) would agree to designate relevant portions of Mr. Malik and Mr. Ferrie's depositions as corporate testimony under Rule 30(b)(6) to the extent that the Defendants wished to do so. This course of action, as proposed by John Hancock, was acknowledged by counsel for Montgomery Partners during our discussions to be acceptable to the Defendants.

6. The depositions of Mr. Henderson, Ms. Coyne, Mr. Nectow, Ms. Uzdavinis and Mr. Thomas occurred on March 1, March 10 (morning), March 10 (afternoon), March 21,

and March 31, 2006, respectively. After the depositions of Mr. Henderson and Ms. Coyne, Montgomery Partners made the argument that those witnesses had not been adequately prepared for their depositions. Specifically, Montgomery Partners complained in a letter dated March 3, 2006, that Mr. Henderson had no “‘specific recollection’” of the approval of the Defendants’ Loan Commitment, and in a letter dated March 10, 2006, that Ms. Coyne “did not speak with any other John Hancock employee” or “review any documents in preparation for her deposition.”

7. John Hancock responded promptly to Montgomery Partners complaints. In a telephone conference held on Monday, March 6, 2006, my partner, Brian Davis, and I explained to Montgomery Partners’ counsel (Attorney Howard Scher), *inter alia*, that: (a) the Rule 30(b)(6) witnesses that Hancock was producing were personally knowledgeable regarding the topics about which they had been designated to testify and did not require extensive further preparation; (b) that they were the most logical Rule 30(b)(6) witnesses to appear and testify on Hancock’s behalf because of their experience and personal involvement; and (c) that Hancock would work with the Defendants to identify and provide additional witness testimony, or to designate prior testimony from Messrs. Malik and Ferrie, as appropriate, to speak to any subject areas that the Defendants reasonably believed had not been adequately addressed.

8. Two days later, on March 8, 2006, I repeated the same offer to Montgomery Partners’ counsel (Attorney Brian McCormick) in writing. A true copy of my e-mail message to Mr. McCormick is appended to this affidavit as Exhibit H. In it, I said:

the final portion of topic #2 (last sentence) seeks a designee with respect to “the negotiation of the [terms and conditions of the Loan Application] between Defendants and John Hancock”. You have already deposed Malik and Ferrie, the Hancock individuals who negotiated that document with the defendants. *Please let me know*

if there are legitimate areas of inquiry on that subject on which you were not able to question those witnesses. If so, I am happy to speak with you and determine whether we can make another witness available – but I think you have already spoken with the most knowledgeable people.

Exhibit H (emphasis added).

9. Montgomery Partners did not take advantage of John Hancock's offers to address their concerns regarding Mr. Henderson's deposition, and did not identify any specific subject areas on which they wished to obtain additional testimony.

10. I spoke again with Montgomery Partners' counsel (Attorney Howard Scher and, as I recall, Attorney Brian McCormick) in the aftermath of their March 10, 2006 letter concerning Ms. Coyne's deposition. In a conference call conducted on Monday, March 13, 2006, I again explained, *inter alia*, that the Rule 30(b)(6) witnesses that John Hancock was producing, including Ms. Coyne, were personally knowledgeable regarding the topics for which they had been designated, and that Hancock would work with the Defendants to identify and provide additional testimony, or to designate prior testimony from Messrs. Malik and Ferrie, as appropriate, to speak to any subject areas that the Defendants reasonably believed had not been adequately addressed. And again, Montgomery Partners counsel failed, in response, to identify any specific subject areas as to which they allegedly lacked sufficient information or testimony. To the contrary, Defendants' counsel expressed satisfaction with John Hancock's proposal and indicated that they likely *would not* seek court intervention concerning the issues raised in their March 10, 2006 letter.

11. Thereafter the parties were in nearly daily communication, working to schedule depositions and coordinating the various logistical details of the litigation. In none of those

communications did Montgomery Partners' counsel raise what it now characterizes as John Hancock's "egregious[]" failure to comply with Rule 30(b)(6).

12. To the contrary, on March 15, 2006, in the context of one of the parties' numerous scheduling communications, counsel for Montgomery Partners (Attorney Brian McCormick) e-mailed me to inquire about the logistics of implementing Hancock's offer to satisfy the Defendants' alleged concerns by designating testimony from the prior Malik and Ferrie depositions as official testimony of John Hancock. A true copy of his e-mail message to me is appended to this affidavit as Exhibit I. In it, he said:

I also want to discuss how your proposal regarding post-designating portions of Mr. Malik's deposition as a 30(b)(6) witness would work.

Exhibit I.

13. I responded to Attorney McCormick's e-mail message by promptly calling him on the telephone and offering that the entire transcript, or portions thereof, could be designated as Rule 30(b)(6) testimony, if that process was acceptable to the Defendants. By all indications, it was.

14. On March 21, 2006, Montgomery Partners conducted the deposition of John Hancock's final Rule 30(b)(6) witness, Ms. Joan Uzdavinis. I defended Ms. Uzdavinis at her deposition. At no time during Ms. Uzdavinis' deposition, or in the week thereafter, did the Defendants make any complaint concerning the extent of her knowledge on the topics for which she was designated or the manner of her "preparation" leading up to her deposition.

15. The first time I learned that Montgomery Partners was in any way dissatisfied with Ms. Uzdavinis' deposition preparation was in midst of a telephonic conference to discuss the content of the parties' Joint Pretrial Memorandum on March 28, 2006. During that call,

counsel for Montgomery Partners announced for the first time their alleged dissatisfaction with Ms. Uzdavinis' deposition preparation and their intention to seek unspecified relief from this Court. Defendants then waited an additional day, and filed their Motion late in the evening of March 29, 2006, thereby leaving John Hancock little time to review, and no opportunity to oppose, the Motion prior to the scheduled Pretrial Conference on Thursday, March 30, 2006.

16. The Court allowed Montgomery Partners' Motion on March 30, 2006, without the benefit of any opposition papers from John Hancock. The Court, however, did encourage the parties at the Pretrial Conference to resolve their discovery disputes among themselves, and did invite John Hancock to submit a Motion for Reconsideration seeking relief from its March 30 Order.

17. Since the Pretrial Conference on March 30, 2006, John Hancock once again has asked Montgomery Partners to identify specific subject areas on which the Defendants believe they are missing information, or the particular subject areas on which they believe that the proffered testimony to date is inadequate or incomplete, so that Hancock can address their concerns. A true copy of a letter on that topic that I sent to opposing counsel (Attorneys Scher and McCormick) on March 30, 2006 is appended to this affidavit as Exhibit J. A true copy of an e-mail message that I received in response from Attorney Scher on April 5, 2006 is appended to this affidavit as Exhibit K. In it, Attorney Scher informed me that the Defendants do not regard it as their burden to "identify areas where we believe information was missing or where testimony was incomplete...."

Signed under the pains and penalties of perjury this 7th day of April, 2006.

/s/ Paul D. Popeo

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on April 7, 2006.

/s/ Brian A. Davis

Brian A. Davis

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MONTGOMERY SQUARE PARTNERSHIP,
Defendants/Counterclaim
Plaintiffs

VOLUME: I
PAGES: 1-224

DEPOSITION OF TIMOTHY J. MALIK
JANUARY 27, 2006
REPORTERS, INC.
GENERAL & TECHNICAL COURT REPORTING
23 MERRYMOUNT ROAD, QUINCY, MA 02169
617.786.7783/Facsimile 617.786.7723

1 APPEARANCES (Continued):
2
3 BUCHANAN INGERSOLL, P.C.
4 Howard D. Scher, Esquire
5 1835 Market Street
6 14th Floor
7 Philadelphia, Pennsylvania 19103-2985
8 215-665-3920
9 scherhd@bipc.com
10 on behalf of the Defendants/
11 Counterclaim Plaintiffs
12

13 ALSO PRESENT:
14 James Koller
15
16
17
18
19
20
21
22
23
24

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Page 4

1 DEPOSITION of TIMOTHY J. MALIK, a witness
2 called on behalf of the Defendants/
3 Counterclaim Plaintiffs, pursuant to the
4 Federal Rules of Civil Procedure, before
5 Judith McGovern Williams, Certified
6 Shorthand Reporter, Registered
7 Professional Reporter, Certified Realtime
8 Reporter, Certified LiveNote Reporter, and
9 Notary Public in and for the Commonwealth
10 of Massachusetts, at the offices of
11 Deutsch, Williams, Brooks, DeRensis &
12 Holland, P.C., 99 Summer Street, Boston,
13 Massachusetts, on Friday, January 27,
14 2006, commencing at 9:30 a.m.
15
16 APPEARANCES:
17 CHOATE, HALL & STEWART, L.L.P.
18 Brian A. Davis, Esquire
19 Two International Place
20 Boston, Massachusetts 02110
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23 on behalf of the Plaintiff/
24 Counterclaim Defendant

1 I N D E X
2 Witness Page
3 TIMOTHY J. MALIK
4 Direct Examination by Mr. Scher 8
5
6 E X H I B I T S
7 Number Page
8
9 1 Multipage loan approval, 65
10 production numbers JH 00405
11 through 00425
12
13 2 One-page memorandum dated 68
14 August 17, 2004, to
15 Mr. Malik from Ms. Coyne,
16 production number JH 01174
17
18 3 Multipage Application to 83
19 John Hancock Life Insurance
20 Company for a First Mortgage
21 Loan, production numbers
22 JH 00327 through 00396
23 4 Two-page e-mail string, most 86
24 recent e-mail dated

Page 5			Page 7		
1	August 11, 2004, to		1	production JH 00100-00105	
2	Mr. Ferrie from Mr. Malik,		2		
3	production numbers JH 00131		3	13 One-page fax cover sheet	182
4	and 00132		4	dated July 14, 2004, to	
5			5	Mr. Maguire from Mr. Kelly	
6	5 One-page e-mail dated	103	6	and attachments, production	
7	August 11, 2004, to		7	numbers V 1161 through 1168	
8	Mr. Kelly from Mr. Ferrie		8		
9	and attachment, production		9	14 One-page Examples of Reserve	197
10	numbers JH 00133 and 00134		10	Calculations, JH 00920	
11			11		
12	6 One-page e-mail dated	111	12	15 One-page Examples of Reserve	200
13	August 11, 2004, to		13	Calculations, production	
14	Mr. Ferrie from Mr. Malik,		14	numbers JH 00914	
15	production number JH 00135		15		
16			16	16 Multipage Interest Rate	200
17	7 Interest Rate Circle	115	17	Circle Notification, numbers	
18	Notification, production		18	JH 00913 through 00920	
19	numbers JH 00913 through		19		
20	00920		20	17 One-page Examples of Reserve	203
21			21	Calculations, number	
22	8 One-page e-mail dated	120	22	JH 01119	
23	August 12, 2004, to				
24	Mr. Henderson from				
Page 6			Page 8		
1	Mr. Malik, production number		1	P R O C E E D I N G S	
2	JH 01175		2	MR. SCHER: This is a case in	
3			3	Federal Court, so there are no	
4	9 Two-page e-mail string, most	135	4	stipulations. We will operate under the	
5	recent e-mail dated May 31,		5	rules.	
6	2005, to Mr. Roseen from		6	- - -	
7	Mr. Malik, production		7	TIMOTHY J. MALIK, first having	
8	numbers JH 01211 through		8	been duly sworn, testified as follows in	
9	01212		9	answer to direct examination by MR. SCHER:	
10			10	- - -	
11	10 One-page e-mail dated	143	11	Q. Good morning, Mr. Malik.	
12	June 9, 2005, to Mr. Malik		12	A. Good morning.	
13	from Mr. Ferrie, production		13	Q. Would you state your full name for the	
14	number JH 01196		14	record, please?	
15			15	A. Timothy James Malik.	
16	11 One-page Preliminary Loan	164	16	Q. And would you give me your address?	
17	Information Worksheet for		17	A. 9 Arthur Avenue, Marblehead, Mass. 01945.	
18	Multifamily Properties,		18	Q. And where are you officed?	
19	production number JH 00102		19	A. I am officed at 200 Clarendon Street,	
20			20	56th floor, Boston.	
21	12 Two-page e-mail string, most	169	21	Q. That is the John Hancock building?	
22	recent e-mail dated June 17,		22	A. It is.	
23	2004, to Mr. Malik from		23	Q. Okay. And what is your position?	
24	Mr. Ferrie and attachment,		24	A. I am a senior investment officer and	

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Page 11

1 assistant vice president and now a credit
 2 officer.
 3 Q. So you have three titles?
 4 A. Well, the title is assistant vice
 5 president.
 6 Q. And the functions are as you just stated?
 7 A. Credit officer. Correct.
 8 Q. And how long have you held that position?
 9 Did you hold that position in the year
 10 2004?
 11 A. 2004, I believe I was an investment
 12 officer and not an assistant vice
 13 president.
 14 Q. Okay.
 15 A. I could have been senior investment
 16 officer. I don't recall.
 17 Q. In the years 2004 and 2005 -- well, let's
 18 just say in 2004, how were you
 19 compensated?
 20 A. Salary plus bonus.
 21 Q. Any other forms of compensation?
 22 A. No. Other than the 401(k), pension, that
 23 kind of thing.
 24 Q. No. I presume that is in your salary.

1 THE WITNESS: Okay.
 2 MR. DAVIS: Thank you.
 3 BY MR. SCHER:
 4 Q. The overall department is called what?
 5 A. The overall department is called
 6 investment and pension sector, I believe,
 7 at that time --
 8 Q. So in 2004 --
 9 A. -- although I don't recall.
 10 Q. In 2004, your bonus was dependent upon the
 11 performance of what?
 12 A. The company largely.
 13 Q. Yes.
 14 A. And the larger investment area. Right.
 15 Q. The larger investment area?
 16 A. Correct.
 17 Q. Okay. And the larger investment area is
 18 what you have been describing as the bond
 19 area?
 20 A. Yes.
 21 Q. And your area?
 22 A. Correct.
 23 Q. And what is your area called?
 24 A. Real estate investment group. Real estate

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Page 12

1 A. Correct.
 2 Q. And what was your bonus based on?
 3 A. It is based on the overall -- at that time
 4 it was the overall department, investment
 5 department, performance. A big part of
 6 that was what was going on in the bond
 7 department that we couldn't affect and the
 8 overall company performance.
 9 Q. So the investment department performance
 10 dictated your bonus?
 11 A. No. It was mostly the big -- the overall
 12 company performance and the bond
 13 department performance. We are a small
 14 piece of the investment sector. We put
 15 out a billion dollars a year to two
 16 billion dollars a year. The bond
 17 department puts out 10 to 20 billion
 18 dollars a year, I believe. So in relative
 19 terms, our -- what we contribute to the
 20 department bonus at that time was not very
 21 large.
 22 Q. Okay.
 23 MR. DAVIS: Please pause before
 24 you answer, so I can object if necessary.

1 investment group, REIG. Since then it has
 2 changed to real estate finance group,
 3 because we don't handle any equities
 4 anymore, just mortgages.
 5 Q. And beyond salary and bonus, what in 2004
 6 was the process by which your performance
 7 was evaluated?
 8 A. I was given a performance evaluation by my
 9 supervisor, and after that point, I don't
 10 know. It depends on how they allocate the
 11 bonus pool to the various departments and
 12 subdepartments and individuals. I believe
 13 my target bonus was 40 percent of salary.
 14 It can go up or down, to zero, to plus
 15 50 percent.
 16 Q. Who was your supervisor at the time?
 17 A. David Henderson.
 18 Q. What was his title?
 19 A. Senior investment officer as well.
 20 Q. At that time you weren't a senior?
 21 A. I think I was a senior investment officer.
 22 Q. You do?
 23 A. Right.
 24 Q. How would you be able to find out what

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1 your position was in 2004 at the time the
 2 transactions that are the subject of this
 3 litigation occurred?
 4 A. I can ask. I can go back and look at my
 5 records or ask --
 6 Q. Okay.
 7 A. -- but.
 8 Q. In any event, Mr. Dave Henderson was at
 9 that time your supervisor?
 10 A. Correct.
 11 Q. Is he still your supervisor?
 12 A. No. He has since left the company.
 13 Q. Who is your supervisor -- when did he
 14 leave?
 15 A. A good question.
 16 Q. Thank you. I hope you don't evaluate all
 17 of my questions, but.
 18 A. Of course I do.
 19 (Laughter.)
 20 A. I believe Dave left early summer of 2005
 21 or late spring.
 22 Q. In any event, it was prior to the time
 23 that the letters of credit that are the
 24 subject of this dispute were called? Am I

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1 Q. You took a brief recess to confer with
 2 your counsel. Am I right?
 3 A. Correct.
 4 Q. Did you discuss the substance of this
 5 case?
 6 MR. DAVIS: Objection. You want
 7 to know what the substance of the
 8 discussion was?
 9 MR. SCHER: Did you discuss the
 10 substance of this case in that
 11 conversation: yes or no?
 12 MR. DAVIS: The substance of
 13 this case? Objection.
 14 And I instruct you not to
 15 answer.
 16 MR. SCHER: Okay.
 17 BY MR. SCHER:
 18 Q. When you described to me the evaluation
 19 process with Mr. Henderson, who else
 20 participated in that evaluation process in
 21 2004?
 22 A. No one else.
 23 Q. And who evaluates you now?
 24 A. My immediate supervisor.

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1 right?
 2 A. I don't recall when they were called.
 3 Q. August.
 4 A. Of this year?
 5 Q. Of 2005.
 6 A. Yes.
 7 Q. Not of 2006. We haven't hit that yet.
 8 A. Yes.
 9 Q. Okay.
 10 A. Yes.
 11 Q. So Mr. Henderson left before the letters
 12 of credit were called?
 13 A. Correct.
 14 MR. DAVIS: Can we take a break
 15 for a minute?
 16 MR. SCHER: Sure.
 17 MR. DAVIS: I just want to talk
 18 to my client.
 19 MR. SCHER: Sure.
 20 (Mr. Davis and the witness
 21 exiting the deposition room at 9:52 a.m.
 22 and reentering the deposition room at
 23 9:53 a.m.)
 24 BY MR. SCHER:

Page 16

1 Q. And who is that?
 2 A. Timothy Roseen, R-O-S-E-E-N.
 3 Q. What was Mr. Roseen's position prior to
 4 the time of Mr. Henderson's departure?
 5 A. Senior credit officer.
 6 Q. Was he superior to Mr. Henderson then?
 7 A. I don't know.
 8 Q. Have you ever seen an organization chart
 9 of your department?
 10 A. Yes.
 11 Q. One exists?
 12 MR. DAVIS: Objection.
 13 A. I haven't seen --
 14 THE WITNESS: Okay?
 15 MR. DAVIS: You can respond.
 16 THE WITNESS: Okay.
 17 A. I haven't seen one recently. I'm not
 18 sure.
 19 Q. Do you have anyone report to you?
 20 A. No.
 21 Q. Did anyone report to you in 2004?
 22 A. No.
 23 Q. Do you have dotted-line reporting from or
 24 to you?

Page 17

1 MR. DAVIS: Objection.
 2 You can respond.
 3 A. Since I don't have a chart, I don't know
 4 what that means.
 5 Q. Okay.
 6 A. Oh, oh, I think I know --
 7 Q. Okay.
 8 A. -- what you mean.
 9 Q. Okay.
 10 A. Yes. I have an assistant, though, that I
 11 share with other people.
 12 Q. All right. Do you have any function with
 13 -- with whom do you function? That is --
 14 well, let me ask you this specific
 15 question.
 16 You have working relationships
 17 with other departments within John
 18 Hancock?
 19 MR. DAVIS: Objection.
 20 You can respond.
 21 A. Yes.
 22 Q. And what other departments?
 23 A. Legal department.
 24 Q. Any other departments?

Page 18

1 MR. DAVIS: The same objection.
 2 A. Not that I can think of.
 3 Q. What about Mr. Ferrie? Do you have any --
 4 what department is he in?
 5 A. He is now -- now -- part of our investment
 6 group.
 7 Q. In 2004, where was he?
 8 A. We had a subsidiary called John Hancock
 9 Real Estate Finance Incorporated.
 10 Q. And what relationship did you have with
 11 that subsidiary?
 12 MR. DAVIS: Objection.
 13 Unless I instruct you otherwise,
 14 you can respond after I object. I am just
 15 earning my pay.
 16 A. They originate loans.
 17 Q. What did you have to do with that?
 18 A. I worked on helping John understand what
 19 loan parameters would work.
 20 Q. Do you have any relationship with John
 21 now?
 22 A. Yes.
 23 Q. The same?
 24 A. Yes.

Page 19

1 Q. Now you said your target bonus was
 2 40 percent of your salary in 2004. Am I
 3 right?
 4 A. Yes.
 5 Q. What does that mean? What is target
 6 bonus?
 7 A. That means if we hit our goals, I should
 8 get about that amount.
 9 Q. And what goals did you have in 2004?
 10 A. To originate as much as we could at a
 11 spread above what we think is reasonable.
 12 Q. Was there any more specificity than that
 13 to your goals?
 14 A. The department goals or my goals?
 15 Q. The goals that would lead to the target
 16 bonus of 40 percent.
 17 A. Could you rephrase the question?
 18 Q. You said that your target bonus was
 19 40 percent of your salary; right? And I
 20 asked you what was the -- what was the --
 21 what did that goal consist of.
 22 A. Oh. The goal consisted of company-wide
 23 parameters.
 24 Q. And the company-wide parameters were make

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1 as much money as you can? Is that it?
 2 MR. DAVIS: Objection.
 3 A. The company-wide parameters is to invest
 4 -- is to -- yes, to make as much money as
 5 you can for the company itself and the
 6 department to invest as much money as we
 7 can.
 8 Q. Okay. And that is what the goal was;
 9 right?
 10 MR. DAVIS: Objection.
 11 A. In general.
 12 Q. So I am asking you in specific. What was
 13 the goal that would result in your
 14 achieving a 40 percent target?
 15 MR. DAVIS: Objection.
 16 A. I -- you know, when they explained where
 17 we were in relationship to our goals and
 18 groups, even then I didn't understand it,
 19 so it's overall company performance and
 20 department performance.
 21 Q. Well, how do you know if your performance
 22 achieved the goal or not, if you wanted
 23 to?
 24 A. You couldn't -- independent of what was

Page 21

1 given to us in a group, you couldn't.
 2 Q. And what was given to you in a group?
 3 A. If we were close to achieving our goals or
 4 not close to achieving our goals, as a
 5 company and as an overall department.
 6 Q. And what were your goals as a company and
 7 as an overall department?
 8 A. It was to, probably to make as much money
 9 as possible for the investors, and for the
 10 investment area, to place as much money at
 11 a reasonable return as possible.
 12 Q. Was there any greater definition to the
 13 goals than what you just articulated now?
 14 A. There are -- there is, but I don't recall
 15 it.
 16 Q. Where -- is that -- are those goals in
 17 writing anywhere?
 18 A. I'm not sure if they still are. We have a
 19 different system now. But I would have to
 20 -- I don't know. Probably. Probably
 21 somewhere.
 22 Q. Were they in writing when they were
 23 articulated to you?
 24 A. Were they in writing when they were

Page 23

1 Q. And what would make your target bonus go
 2 up from 40 percent?
 3 A. If the company --
 4 MR. DAVIS: Objection. Do you
 5 mean go above the 40 percent?
 6 MR. SCHER: Yes. Up from the
 7 40 percent. That's what I mean.
 8 A. If the company and the department exceeded
 9 the goals on a weighted average basis,
 10 let's say, and my performance was strong.
 11 Q. Okay. And what would cause your target
 12 bonus of 40 percent to go below that?
 13 A. If they -- if -- if the company and the
 14 department did not hit its goals and my
 15 performance was weak.
 16 Q. Describe what "strong performance" would
 17 be for you.
 18 A. Originate as many loans as possible in
 19 terms of dollars with high quality and
 20 good spreads.
 21 Q. And was that performance goal set forth in
 22 writing anywhere?
 23 A. I don't recall.
 24 Q. Was the evaluation of -- when you say "as

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1 articulated to me? I believe they were,
 2 but I don't keep copies of it.
 3 Q. So you had a copy?
 4 A. So I don't understand it. I didn't --
 5 Q. I understand. You had a guide -- you had
 6 a document that set forth the goals of the
 7 company, set forth the goals of the
 8 overall department, and it contained
 9 specific goals, percentages, numbers? Am
 10 I right about that?
 11 A. Yes. Probably.
 12 MR. DAVIS: He is not asking you
 13 to speculate. If you know, you can
 14 respond.
 15 THE WITNESS: Yes.
 16 Q. Well, "probably" is good enough. I don't
 17 want you to speculate.
 18 MR. DAVIS: I don't want him to
 19 either.
 20 MR. SCHER: Good.
 21 MR. DAVIS: So please don't
 22 speculate.
 23 MR. SCHER: Fine.
 24 BY MR. SCHER:

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1 many loans," you mean as much in terms of
 2 dollars, not in terms of number of loans;
 3 right?
 4 A. Correct.
 5 Q. And in terms of high quality, is there any
 6 articulation of what that means?
 7 A. Well --
 8 Q. Can you describe to me what you mean by,
 9 what was meant by that?
 10 A. That the loans are as safe and
 11 conservative as possible, and the relative
 12 spreads are high relative to that risk.
 13 Q. And what do you mean by "spreads"?
 14 A. A spread is the difference between the
 15 interest rate and the treasury at the time
 16 we do lock the rates, taking out any
 17 forward costs.
 18 Q. So the interest rate in the loan less the
 19 treasury rate is the spread, taking out
 20 the costs, the forward costs?
 21 A. Correct.
 22 Q. Not every loan has forward costs? Only
 23 loans that are forward loans; right?
 24 MR. DAVIS: Objection.

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1 A. A typical loan has a 60-day close.
 2 Q. Okay.
 3 A. So there is always embedded a small
 4 forward 60 day. We don't count that.
 5 That is included in the spread.
 6 Q. All right. So then I was right?
 7 A. Yes. If it is an extraordinary forward,
 8 right, beyond that.
 9 Q. The situation in this case was an
 10 extraordinary forward? Am I right?
 11 A. Yes.
 12 Q. Are there any other performance standards
 13 for your personal performance than those
 14 which you have already articulated?
 15 A. Helping my associates; helping with any
 16 special projects within the department;
 17 those kind of things.
 18 Q. For the year 2004, did you receive your
 19 target bonus?
 20 A. I believe I did.
 21 Q. Did you receive greater than your target
 22 bonus?
 23 A. 2005? I believe I did.
 24 Q. And can you tell me what the reason as you

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1 understand it for that achievement?
 2 A. I believe the company exceeded its goals,
 3 and the department exceeded its goals.
 4 Q. Was your performance strong?
 5 A. Yes.
 6 Q. And can you tell me whether the making of
 7 the \$32 million loan to Avenel was part of
 8 your performance?
 9 A. Let me think about that a second.
 10 (Pause.)
 11 A. Yes. I believe it was.
 12 Q. And was --
 13 A. Hold on a second. Let me think.
 14 (Pause.)
 15 A. No, it wasn't actually. No, it wasn't
 16 actually.
 17 Q. And why was it not?
 18 A. Because it wasn't counted after we
 19 received, I believe, indication that they
 20 wouldn't continue with the commitment.
 21 Q. So let's --
 22 A. Let me think about that a second. Hold on
 23 a second.
 24 Q. Maybe I can help you.

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1 A. The loan was signed in August. I think it
 2 was counted, now that I think about it.
 3 Q. All right.
 4 A. Yes, it was.
 5 Q. So your performance in 2004 is evaluated
 6 at what time of the year?
 7 A. The first quarter.
 8 Q. Of the subsequent year?
 9 A. Yes.
 10 Q. So sometime before March 31, 2005, there
 11 was a performance evaluation of Timothy
 12 Malik's performance? Am I right?
 13 A. I believe the performance evaluation was
 14 done at the end of 2004.
 15 Q. Okay.
 16 A. And in 2005, the numbers come in for
 17 accounting to determine if the company
 18 actually hit its targets.
 19 Q. Okay. But in your performance, your
 20 personal performance, that is done at the
 21 end of 2004 for 2004?
 22 A. Correct.
 23 Q. And within that performance was included
 24 the \$32 million Avenel loan?

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1 A. I think. I'm not sure. I don't recall
 2 when exactly we received indication they
 3 weren't going to close the loan.
 4 Q. The first indication would be in the
 5 spring of 2005. I represent that to you.
 6 A. Okay. Then it would have been, yes, it
 7 would have been counted.
 8 Q. Certainly not in 2004.
 9 A. All right.
 10 Q. So would it have been counted?
 11 A. Yes.
 12 Q. So I'm just trying to understand. It is
 13 good for your personal performance
 14 evaluation to have made the \$32 million
 15 loan to Avenel?
 16 A. Yes.
 17 Q. Am I right?
 18 A. Yes.
 19 Q. Okay. In 2005, did your performance
 20 evaluation include anything to do with the
 21 Avenel loan and its not being closed?
 22 A. Not to my knowledge.
 23 Q. Did the collection of the processing,
 24 application, or commitment fees have any

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1 effect on the performance of -- on your
 2 performance?
 3 MR. DAVIS: Objection.
 4 A. Not to my knowledge. A de minimus amount
 5 of money.
 6 Q. The \$965,000 is a de minimus amount of
 7 money in your --
 8 A. It hasn't been --
 9 MR. DAVIS: Let him finish his
 10 question before you begin to respond.
 11 Q. -- in your world?
 12 MR. DAVIS: Objection.
 13 You may respond.
 14 A. The only thing that would have been taken
 15 into the company's books would be the
 16 nonrefundable processing fee. The other
 17 money hasn't been taken in, I believe,
 18 yet.
 19 Q. Okay.
 20 A. It sits there.
 21 Q. The nonrefundable processing fee?
 22 A. Is \$5,000.
 23 Q. Is the \$5,000?
 24 A. Yes.

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1 Q. And the balance --
 2 A. 2004.
 3 MR. DAVIS: Let him finish his
 4 question before you answer.
 5 MR. SCHER: I apologize. I
 6 stepped on your answer. I apologize.
 7 Q. So the \$960,000 processing and application
 8 fee -- processing and commitment fees have
 9 not yet been taken into the revenues of
 10 the company? Am I right?
 11 A. It is the application and commitment fee.
 12 Q. I am sorry. Processing is the \$5,000 one?
 13 A. Yes.
 14 Q. Thank you. And the answer to my question
 15 is yes, the application and commitment
 16 fees have not yet been taken into the
 17 revenues of the company?
 18 A. I believe that's the case.
 19 Q. Well, what does that mean that the
 20 application and commitment fees have not
 21 been taken into the revenues of the
 22 company? Where are they recorded?
 23 A. I don't know.
 24 Q. When those applications -- when the

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1 application and commitment fees are taken
 2 into the revenues of the company, will
 3 that reflect on your performance?
 4 A. I really don't know.
 5 Q. Will that reflect on the performance of
 6 your department?
 7 A. Possibly, but again I don't know.
 8 Q. And why don't you know?
 9 MR. DAVIS: Objection.
 10 A. Because I am focused on production and not
 11 counting.
 12 Q. So the application and commitment fees
 13 would be counting in your mind, and that's
 14 not what you are --
 15 A. How it is recorded --
 16 MR. DAVIS: Please let him
 17 finish his question --
 18 MR. SCHER: Right.
 19 MR. DAVIS: -- before you begin
 20 to respond.
 21 BY MR. SCHER:
 22 Q. So by counting, you mean how it is
 23 recorded?
 24 A. (The witness nodding his head.)

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1 Q. That is not of your concern?
 2 A. (The witness nodding his head.)
 3 Q. Is that what you are saying?
 4 MR. DAVIS: Objection.
 5 You may respond.
 6 A. Yes.
 7 Q. Now you said that the 960 or 965 thousand
 8 dollars is de minimus. What did you mean
 9 by that?
 10 MR. DAVIS: Objection. I think
 11 he referred to the 5,000 as de minimus.
 12 MR. SCHER: Yes.
 13 MR. DAVIS: But you may respond.
 14 THE WITNESS: Yes.
 15 BY MR. SCHER:
 16 Q. Is that what you were saying?
 17 A. Yes.
 18 Q. That the 5,000 is de minimus?
 19 A. Correct.
 20 Q. The 960 is not de minimus? Am I right?
 21 MR. DAVIS: Objection.
 22 You can respond.
 23 A. It seems like a lot of money to me.
 24 Q. But, of course, you and I are not talking

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1 about our personal money. We are talking
 2 about your performance within the company.
 3 Is a \$960,000 fee a significant
 4 fee to the company?
 5 MR. DAVIS: Objection.
 6 A. It depends on who you ask. I don't know.
 7 Q. I am asking you.
 8 A. To the company?
 9 MR. DAVIS: Objection.
 10 Q. I am asking is it significant to your
 11 performance.
 12 MR. DAVIS: Objection.
 13 A. Oh, that clarifies it.
 14 Q. Is the receipt of a \$960,000 fee of
 15 significance to your performance?
 16 A. No.
 17 Q. Is it insignificant to your performance?
 18 MR. DAVIS: Objection.
 19 A. I don't know how it is accounted, how it
 20 is counted towards my performance.
 21 Q. Okay. Is it fair to say that it was in
 22 your personal interest, that is your
 23 interest as an employee of John Hancock,
 24 to make the \$32 million loan to Avenel

1 Q. The quantity.
 2 A. The quantity of loans?
 3 MR. DAVIS: When you say "you,"
 4 do you mean him personally, Mr. Malik,
 5 that he had a hand in, or --
 6 MR. SCHER: Yes. That you had a
 7 hand in.
 8 THE WITNESS: Okay.
 9 MR. SCHER: Thank you.
 10 THE WITNESS: I would say
 11 200 million to 350 million.
 12 BY MR. SCHER:
 13 Q. And how would you characterize your role
 14 in securing the approval of the Avenel
 15 loan?
 16 A. It was approved.
 17 Q. How would you describe your role? Were
 18 you the principal mover in your
 19 department? Were you the only one, you
 20 know, someone? How would you characterize
 21 your role?
 22 A. My role -- to get it approved, you mean?
 23 Q. Yes.
 24 A. I presented the loan to the real estate

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1 because it would reflect favorably on your
 2 performance?
 3 A. Anything that I do that creates return for
 4 the investors is important.
 5 Q. Okay. So could you answer my specific
 6 question? Is that in "anything"? That is
 7 does the making of the \$32 million loan,
 8 the process of approving the \$32 million
 9 loan to Avenel, reflect favorably on your
 10 performance?
 11 MR. DAVIS: Objection.
 12 A. I hope so. Yes.
 13 Q. And in fact it did in the year 2004?
 14 A. Any loan that becomes approved reflects
 15 positively on my performance.
 16 Q. That is what you are supposed to do? Am I
 17 right?
 18 A. You are right.
 19 Q. That's your job?
 20 A. Yes.
 21 Q. Okay. Can you quantify or approximate the
 22 number of loans that you had approved
 23 during the year 2004?
 24 A. Oh, the number of loans?

1 investment committee.
 2 Q. Okay. How many other -- what is the
 3 quantity of loans for which you were the
 4 presenter in 2004?
 5 A. Ten to fifteen loans.
 6 Q. The quantity, the amount of money in
 7 loans.
 8 A. 2004?
 9 Q. Yes.
 10 A. Didn't I just say?
 11 Q. I am sorry. I didn't realize that you
 12 were the presenter on all 200 million to
 13 350 million.
 14 A. Yes.
 15 Q. I am sorry. I apologize. I didn't
 16 understand that.
 17 Were any of those other loans
 18 other than the Avenel loan a forward
 19 commitment, beyond the 60-day normal?
 20 A. I believe there were others that were
 21 forward, yes.
 22 Q. Can you quantify in dollar amount?
 23 A. No.
 24 Q. Did any of those other forward commitments

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1 actually result in the lending of money by
 2 John Hancock?
 3 A. They all related.
 4 Q. Every one but Avenel? Am I right?
 5 A. In 2004? You are talking about 2004?
 6 Q. Yes.
 7 A. I believe one other did not.
 8 Q. Which one is that?
 9 A. And I think -- the Regatta, that was 2004,
 10 wasn't it? Regatta Apartments.
 11 Q. Regatta did not?
 12 A. I believe it did not, now that I think
 13 about it.
 14 Q. And is it fair to say that the Regatta
 15 loan was a loan for which you were the
 16 presenter?
 17 A. Correct.
 18 Q. And it is a loan which was a forward
 19 commitment?
 20 A. Correct.
 21 Q. And it is a loan which did not close?
 22 A. Correct.
 23 Q. Have you sued Regatta or the developers of
 24 Regatta?

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1 A. No.
 2 Q. Have you sought to recover -- make whole
 3 damages from the owners of Regatta?
 4 A. I believe we only kept the deposits.
 5 Q. The deposits are the application and
 6 commitment fees?
 7 A. Correct.
 8 Q. And the processing fee?
 9 A. Correct.
 10 Q. And why is that?
 11 MR. DAVIS: Objection.
 12 Go ahead. I just caution in
 13 responding to not disclose any attorney
 14 communications, please.
 15 THE WITNESS: Okay.
 16 A. The reasons?
 17 Q. Yes.
 18 A. I can only speculate.
 19 Q. You don't know why the company did not
 20 seek to recover more than the application
 21 and commitment and processing fees from
 22 the Regatta developers? Am I right?
 23 A. The reasoning? The reasoning of the
 24 decision makers? No. I'm not sure.

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1 Q. I just wanted to know why. Do you know
 2 why?
 3 A. Do I know why?
 4 Q. Correct.
 5 A. They chose not to?
 6 Q. Correct.
 7 A. Not entirely. No.
 8 Q. Do you know anything as to why?
 9 A. Different philosophy at the time, I guess.
 10 Q. And what time was that? Well, how is the
 11 time different? I mean not in day, but
 12 what was different about the time?
 13 A. Different decision makers.
 14 Q. Who were the decision makers then at the
 15 time of the Regatta decision?
 16 A. The decision makers were the original John
 17 Hancock officers.
 18 Q. Do they have names? I don't mean to be
 19 facetious, but.
 20 A. No. Go ahead.
 21 Q. Don't invite me to be facetious.
 22 (Laughter.)
 23 Q. I am only kidding.
 24 A. The head of the department was Sam Davis,

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1 and Barry Nectow.
 2 Q. Do you have a spelling?
 3 A. N-E-C-T-O-W.
 4 Q. Okay. And who were they at the time the
 5 decision was made to sue --
 6 A. Sam was a senior --
 7 MR. DAVIS: Oh, objection.
 8 Would you please finish your question? He
 9 didn't -- I don't think he finished his
 10 question.
 11 Q. -- the defendants in this case.
 12 MR. SCHER: Thanks. Brian is
 13 protecting me now.
 14 MR. DAVIS: I am just trying to
 15 keep a clear record. Go ahead.
 16 MR. SCHER: Thanks. I
 17 apologize.
 18 BY MR. SCHER:
 19 Q. Go ahead.
 20 A. Sam's title, I believe, was senior vice
 21 president, and Barry's was vice president.
 22 Q. Obviously you missed my question. Who
 23 made the decision to sue the defendants in
 24 this case?

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1 A. I don't know.
 2 Q. Who were the decision makers that differed
 3 from Mr. Davis and Mr. Nectow?
 4 A. Well, I communicate with Dave Henderson,
 5 and who he chooses to communicate to make
 6 a decision is up to him. I'm assuming he
 7 communicated with Sam or Barry.
 8 Q. But you said that Mr. Henderson had left
 9 the company --
 10 A. Yes.
 11 Q. -- by the spring of 2005?
 12 A. Correct.
 13 Q. Was the decision to sue Avenel made -- the
 14 defendants in this case -- made before
 15 Mr. Henderson left?
 16 A. I believe it was.
 17 Q. And what is the basis for that belief?
 18 A. I believe he left before we received their
 19 letter and after I had met with Jim.
 20 Q. I see. And could you -- so you reported
 21 to Mr. Henderson, Dave Henderson, your
 22 lunch -- the results of your lunch, the
 23 subject of your lunch with Mr. Koller and
 24 Mr. Kelly?

1 decision to enforce their rights was made?
 2 A. No. I wasn't there for that conversation.
 3 Q. Do you know anything about the process by
 4 which the decision not to sue Regatta was
 5 made?
 6 A. No, I don't. I wasn't there for that
 7 conversation either.
 8 Q. You mentioned --
 9 A. Mr. --
 10 Q. I am sorry?
 11 A. Maybe some clarification.
 12 Q. Yes.
 13 A. Mr. Henderson and the controller of the
 14 department had changed regarding this most
 15 recent decision to maintain our rights.
 16 Q. So --
 17 A. Different decision makers in either case.
 18 Q. So the -- who was Mr. Henderson's
 19 comparable when the decision with regard
 20 to Avenel was made?
 21 A. Mr. Henderson -- Dave was there for both
 22 instances.
 23 Q. Okay.
 24 A. Who he reported to changed.

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1 A. Yes.
 2 Q. Do I have that right?
 3 A. Yes.
 4 Q. Okay. And you also conveyed to him the
 5 letter Mr. Koller had written on the
 6 subject of the fact they were not going to
 7 close the loan; right?
 8 A. I'm not sure if I gave him the letter.
 9 Q. All right.
 10 A. I may have.
 11 Q. In any event, as a result of that, you
 12 learned that the company had made a
 13 decision to sue? Am I right?
 14 MR. DAVIS: Objection.
 15 A. They made a decision to enforce their
 16 rights.
 17 Q. Through a lawsuit?
 18 A. I don't know if a lawsuit was decided at
 19 this time.
 20 Q. Okay.
 21 A. Maybe later.
 22 Q. And do you know anything about the process
 23 by which Mr. Henderson -- do you know
 24 anything about the process by which the

1 Q. And to whom did he report to then at the
 2 time of Regatta and now at the time of
 3 Avenel?
 4 A. I believe Sam Davis or Barry Nectow.
 5 Q. Okay. And to whom did Mr. Henderson
 6 report after -- with respect to the Avenel
 7 decision?
 8 A. It would -- he would have discussed this
 9 with either Barry Nectow or I believe
 10 possibly Ivor Thomas.
 11 Q. Ivor Thomas, I-V-O-R?
 12 A. Yes.
 13 Q. T-H-O-M-A-S?
 14 A. Yes.
 15 Q. And who is Mr. Thomas?
 16 A. He is a -- his title is senior vice
 17 president, North American Mortgage
 18 Operations --
 19 Q. Did he succeed --
 20 A. -- for Manulife.
 21 Q. Did he succeed Mr. Davis?
 22 A. In the transition when he -- yes. He
 23 succeeded Mr. Davis. Correct.
 24 Q. In terms of the role that Mr. Davis was

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1 playing at this time --
 2 A. Correct.
 3 Q. -- with respect to the Regatta loan?
 4 A. Yes.
 5 Q. Now during this period of time, that is
 6 2004 to 2005, is it accurate to say that
 7 there were changes occurring throughout
 8 the John Hancock Company?
 9 A. Yes.
 10 Q. And could you just describe to me in
 11 general what, you know, what caused that,
 12 which is the obvious?
 13 A. Manulife acquired John Hancock in
 14 April 28, 2004.
 15 Q. And over the period of time after that
 16 acquisition, certain personnel changes
 17 occurred?
 18 A. Correct.
 19 Q. One of which was Mr. Davis' change of his
 20 position and Mr. Thomas' assumption of his
 21 position; is that right?
 22 A. Yes.
 23 Q. As far as you know with respect to the
 24 Regatta and Avenel decisions, were there

1 that?
 2 MR. DAVIS: Objection.
 3 A. I'm not entirely --
 4 MR. DAVIS: The entire period
 5 of --
 6 A. I'm not entirely sure.
 7 Q. So it has never come to your attention
 8 that, oh, there is a big difference or
 9 there is a difference between the Regatta
 10 loans and the Avenel loans which connects
 11 somehow to the decision by John Hancock to
 12 sue these defendants?
 13 A. Give it to me again.
 14 Q. Easy. You said you haven't reviewed the
 15 two documents to compare them word for
 16 word to see if there are any differences?
 17 A. Yes.
 18 Q. I can do that, you can do that, Mr. Davis
 19 can do that better than both of us. I am
 20 asking if it has come to your
 21 consciousness, to your attention, that
 22 there is a difference in the documents
 23 which resulted in the two different
 24 decisions: one, not to sue Regatta, and,

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1 any other personnel changes that caused
 2 those decisions to be made as they were
 3 made?
 4 MR. DAVIS: Objection.
 5 A. Possibly, but I'm not entirely sure.
 6 Q. The one that you do know of is Davis is
 7 not there; Thomas is there; right?
 8 A. I believe that's the case.
 9 Q. Okay. So as far as you know, the Regatta
 10 loan documents, the loan application, the
 11 approval process and so forth were
 12 essentially the same as those for the
 13 Avenel? Am I right about that?
 14 MR. DAVIS: Objection. The
 15 documents will speak for themselves.
 16 You can respond.
 17 Q. So far as you know.
 18 MR. DAVIS: Objection.
 19 A. Sort of.
 20 Q. What -- do you know of any significant
 21 differences?
 22 A. I haven't compared them.
 23 Q. Okay. So you don't know of any
 24 significant differences? Am I right about

1 two, to sue these defendants?
 2 A. It has not come to my attention.
 3 Q. So as far as you know -- as far as you
 4 know -- and there may be differences in
 5 the documents, there may be a whole lot of
 6 things, but as far as you know, the big
 7 difference was the change from Mr. Davis
 8 to Mr. Thomas?
 9 MR. DAVIS: Objection.
 10 A. I'm not sure.
 11 Q. Do you know of any other, any other
 12 change?
 13 A. I haven't studied it that closely to be
 14 able to highlight anything.
 15 Q. Without studying it closely to highlight
 16 anything, just tell me. Do you know of
 17 anything that has changed other than
 18 Mr. Davis has been supplanted by Ivor
 19 Thomas?
 20 MR. DAVIS: Objection. Asked
 21 and answered.
 22 You can respond again.
 23 THE WITNESS: Okay.
 24 A. No.

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1 Q. Okay. Did the acquisition by Manulife --
 2 I do have that right? Manulife?
 3 A. Manulife, right.
 4 Q. -- have any change on your compensation,
 5 evaluation, standards?
 6 A. Yes.
 7 Q. And what? How did that happen?
 8 A. The --
 9 Q. What effect?
 10 A. I was eventually promoted.
 11 Q. And do you understand why it was you were
 12 promoted?
 13 A. I'm a nice guy.
 14 Q. That has been established beyond Cavil in
 15 this deposition. It is now 10:33, and I
 16 am prepared to go on the record on that.
 17 You are a nice guy.
 18 (Laughter.)
 19 Q. Is there any other reason? Because
 20 otherwise I would be chairman of the board
 21 by now.
 22 A. Hard working, I guess. Maybe it is
 23 because a lot of the senior guys left, and
 24 I'm an older fellow with more experience.

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1 It is hard to say.
 2 Q. Were there -- was there a number of
 3 personnel changes after the acquisition?
 4 A. Yes.
 5 Q. And what precipitated them in general?
 6 Was there an offer to have senior people
 7 leave?
 8 A. I don't know if there was something
 9 especially offered to the senior people.
 10 I suspect there may have been.
 11 Q. Okay.
 12 MR. DAVIS: I caution you not to
 13 speculate.
 14 THE WITNESS: Okay.
 15 A. I don't know specifically. Other people
 16 left for other reasons, personal reasons.
 17 Q. Why did Mr. Henderson leave?
 18 A. I believe he was downsized.
 19 Q. And could you just explain, as if I didn't
 20 understand what that means? What does
 21 that mean?
 22 A. They felt his position was unnecessary.
 23 Q. So he was asked to leave?
 24 A. Yes.

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1 Q. Was his having been asked to leave, was it
 2 either you or he who would leave, or was
 3 it -- how did that work?
 4 A. No. It wasn't. It wasn't either/or.
 5 Q. It was him?
 6 A. He was -- yes.
 7 Q. And was it his performance that indicated
 8 the necessity of his being asked to leave
 9 or --
 10 A. I can --
 11 MR. DAVIS: Objection.
 12 THE WITNESS: I can only
 13 speculate.
 14 MR. DAVIS: Then don't.
 15 MR. SCHER: I don't want you to
 16 speculate.
 17 BY MR. SCHER:
 18 Q. How did you learn his position was
 19 downsized as opposed to his --
 20 A. He told me.
 21 Q. And what did he tell you?
 22 A. I don't recall. He --
 23 Q. The gist of it was that he was downsized?
 24 A. Correct.

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1 Q. Can you recall anything else of the gist
 2 of that conversation you had with
 3 Mr. Henderson or those conversations you
 4 had with Mr. Henderson?
 5 A. I understand he was unhappy.
 6 Q. Unhappy because of what?
 7 A. Because he was downsized.
 8 Q. Was he unhappy with his compensation?
 9 A. No. He -- that didn't come up as an
 10 issue.
 11 Q. What else do you recall in the
 12 conversations with Mr. Henderson regarding
 13 his being downsized?
 14 A. He thought it may have been a blessing in
 15 disguise.
 16 Q. New opportunities?
 17 A. Correct.
 18 Q. What else?
 19 A. And that he was buying a boat.
 20 Q. What did he name the boat? Avenel?
 21 A. Avenel 2.
 22 Q. Exactly.
 23 A. I'm kidding.
 24 Q. Okay. I understand that.

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1 (Laughter.)

2 Q. Anything else?

3 A. No. Not that I can recall.

4 Q. Did Mr. Ivor Thomas have anything to do

5 with the decision to downsize

6 Mr. Henderson?

7 A. I don't know.

8 Q. Do you know who did have a role in the

9 decision to downsize Mr. Henderson?

10 A. I could only speculate.

11 Q. Don't speculate.

12 MR. SCHER: We have been going

13 about an hour. Do you want to take a

14 break?

15 MR. DAVIS: Sure. If you want

16 to. That's fine.

17 MR. SCHER: Okay.

18 MR. DAVIS: Take a break for

19 five minutes?

20 MR. SCHER: Five minutes.

21 (Recess taken at 10:37 a.m.)

22 (Recess ended at 10:47 a.m.)

23 BY MR. SCHER:

24 Q. Mr. Malik, what was your total

1 A. Yes.

2 Q. And has your bonus for 2005's performance

3 yet been set?

4 A. No.

5 Q. What is your educational background? You

6 graduated from college?

7 A. Yes.

8 Q. Do you have a degree in a particular area?

9 A. I have three degrees. An A.B. from Case

10 Western Reserve University, Cleveland, in

11 psychology and sociology; I have an M.A.

12 in education and counseling from Arizona

13 State; and I have an M.B.A. in finance

14 from U.C. Berkley.

15 Q. Could you review your employment history,

16 full-time employment history?

17 A. Since I went to Berkley maybe.

18 Q. Okay.

19 A. A different career prior to that.

20 Q. Okay. When did you get your M.B.A.?

21 A. I graduated in '84.

22 Q. Okay. So your full-time employment after.

23 A. So my first job, I was president of a

24 regional syndication company called

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1 compensation for 2004?

2 A. I don't recall. 2004?

3 Q. What was your compensation without bonus?

4 A. \$103,000.

5 Q. And what was your percentage bonus?

6 A. The bonus I received in 2004 would have

7 been work I did for 2003, and before -- I

8 can only guess.

9 MR. DAVIS: Don't speculate.

10 THE WITNESS: Okay.

11 Q. So your salary for 2004 was 103. What was

12 your bonus for your performance in 2004?

13 A. Which I receive in 2005; right?

14 Q. Right.

15 A. Roughly 60,000.

16 Q. And what was your salary in 2005?

17 A. Well, I received a promotion --

18 Q. Right.

19 A. -- so the salary went up. All in,

20 including the bonus that I received for

21 the previous year, 175.

22 Q. So if you subtract the \$60,000 bonus --

23 A. Right.

24 Q. -- then your salary was about 115?

1 Enterprises Entrenous -- well, my company

2 was EEN Property Management in the Bay

3 area.

4 Q. Could you just say what the uninitialed,

5 you know, what the full name of the

6 company was?

7 A. Enterprises Entrenous, E-N-T-R-E-N-O-U-S.

8 Q. Okay.

9 A. French.

10 Q. Okay.

11 A. Enterprises Entrenous.

12 Q. Was it a French company?

13 A. No.

14 Q. And you were regional president -- you

15 were president of a region?

16 A. I was -- the company was only in the Bay

17 area, so it was a regional syndication

18 company for real estate.

19 Q. Okay. And what -- you were president?

20 A. I was president of the property management

21 company --

22 Q. Okay.

23 A. -- which is called --

24 MR. DAVIS: Please let him

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1 finish his questions before you begin to
 2 answer.
 3 Q. Which was called EEN; right?
 4 MR. DAVIS: Did you get the
 5 whack on the record?
 6 (Laughter.)
 7 A. EEN Property Management.
 8 Q. Okay. And I take it you managed
 9 properties?
 10 A. Correct.
 11 Q. And that means lease? Sell?
 12 A. We would buy a property, mostly apartment
 13 buildings, in Oakland and Contra Costa
 14 County, which is the East Bay, redevelop
 15 them, which would mean retenant them,
 16 rebuild the interiors of the units and the
 17 exteriors of the buildings, and then sell
 18 them within a period of five to seven
 19 years usually.
 20 Q. How long were you with EEN?
 21 A. Just two years.
 22 Q. And then what did you do?
 23 A. Then I took a job at John Hancock.
 24 Q. And what did you -- what was your starting

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1 explanation of how everything transformed
 2 during that period of time, a couple of
 3 times, I then started managing properties
 4 that we had foreclosed on, mostly on the
 5 west coast, mostly office buildings, some
 6 shopping centers, and I would be
 7 responsible for taking the property in,
 8 hiring all the managers and the leasing
 9 agents and the contractors and the
 10 architects to rebuild the properties,
 11 retenant the properties, and sell them.
 12 And I did that for I have got to
 13 say, oh, eight years, nine years, first
 14 with mostly apartments. Then I became a
 15 retail specialist. So I had all regional
 16 shopping centers and malls all over the
 17 country.
 18 Q. And then what did you do?
 19 A. Then I -- the company decided to go
 20 public, and they had to sell off all the
 21 real estate, but they asked me to come
 22 over to the mortgage department after they
 23 got most of that done and be a loan
 24 officer, which is also known as an

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1 position?
 2 A. I was a vice president of John Hancock
 3 Property Management Incorporated, which I
 4 managed all of the syndicated properties.
 5 They had a limited partnership business
 6 they had just started, and I managed the
 7 syndicated properties, mostly apartments
 8 at the time, and was involved with the
 9 development of a condominium project.
 10 Q. Where was that condominium project?
 11 A. Manchester, New Hampshire. It is a mid-
 12 rise, six stories, 74 units --
 13 Q. And how long did you remain in that
 14 position? What was your next position?
 15 A. I would like to say I was there for five
 16 years, I believe, and then -- maybe four
 17 years -- and then I was transferred to, in
 18 the same group, in a subsidiary, you know,
 19 in the mortgage area, and this is all part
 20 of the mortgage area, but we were doing --
 21 we had some subsidiaries that we were
 22 managing -- investing in real estate
 23 limited partnerships.
 24 Without going into a long-winded

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1 investment officer.
 2 Q. And can you place that in time?
 3 A. Oh, let's see. I would say 1999 possibly.
 4 Q. Coincident --
 5 A. Late '99.
 6 Q. About the same time as John Hancock went
 7 public?
 8 A. Yes. Close. Before that.
 9 Q. Just before that?
 10 A. Right.
 11 Q. And did you -- from that time until 2005,
 12 did you change positions?
 13 A. No. I was a loan officer, investment
 14 officer. Right.
 15 Q. What is the difference between a loan
 16 officer and an investment officer?
 17 A. The same thing.
 18 Q. Okay.
 19 A. An investment officer could also be
 20 working in the bond area, too. But, you
 21 know, in my area, it is still a loan
 22 officer. Right.
 23 Q. So the subject of your duties and
 24 responsibilities as a loan officer

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1 beginning late 1999 --
 2 A. Yes. Probably. Or early 1999.
 3 Q. Okay. Well, at the time you assumed that
 4 position --
 5 A. Yes.
 6 Q. -- could you just describe them for me,
 7 what your duties and responsibilities
 8 were?
 9 A. My duties were to work with either
 10 correspondents or personnel like John
 11 Ferrie in the field offices to help them
 12 originate mortgage loans on commercial
 13 real estate of any sort.
 14 Q. And those duties and responsibilities
 15 remain unchanged, even to today?
 16 A. Pretty much.
 17 Q. Have your duties --
 18 A. Excuse me. There is a change. I am now
 19 considered a credit officer.
 20 Q. And how does that change your duties and
 21 responsibilities?
 22 A. I still work with John and other field
 23 offices, but now I work with fellow
 24 investment officers who work with

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1 other investment officers at the home
 2 office. They write up the loan, describe
 3 the loan and the security and the market
 4 and present it, and I help them edit it,
 5 and then I'm a -- one of the initial
 6 signers of the approval.
 7 It then goes up the authority
 8 chain, depending on the size of the loan
 9 and how many other loans that particular
 10 borrower has with us.
 11 Q. The risk?
 12 A. Yes -- well, maybe not the risk, but, you
 13 know, just by the gross amount of loans
 14 that the person has with us may make it go
 15 to a higher signature level.
 16 Q. I see.
 17 A. Or if it is a bigger loan, it goes to a
 18 higher signature level. And so I would
 19 recommend those loans by my signature.
 20 Q. What process, committee or signature, was
 21 employed with respect to the Avenel loan?
 22 A. Signature -- oh, yes. Signature.
 23 Signature. Right.
 24 Q. Was there a -- about how many signature

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1 correspondents to help them get their
 2 deals approved. It has gone, under
 3 Manulife, it has gone from a committee
 4 process with John Hancock to a signature
 5 process for approval, and I am one of the
 6 signators now on deals that I'm involved
 7 with.
 8 Q. Okay. The committee process, could you
 9 just describe what the committee process
 10 is?
 11 A. The committee process is a formal
 12 presentation of a written mortgage loan to
 13 get it approved so we can send our
 14 commitment out in a group setting, where
 15 anywhere from four to eight officers, and
 16 anybody else who wants to sit in and hear
 17 it, hears the presentation and your
 18 response to questions asked by the
 19 committee.
 20 Q. The signature process is all in writing?
 21 A. The signature is more of a written
 22 process, with greater written
 23 descriptions, and the loan officer -- John
 24 is considered a loan officer, and so are

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1 transactions had been -- had you
 2 participated in as of the time of the
 3 Avenel loan, which is mid August is when
 4 the approval was made of 2004?
 5 A. I don't recall.
 6 Q. Had there been any, or was this your
 7 first?
 8 A. Possibly.
 9 MR. DAVIS: I would caution you
 10 not to speculate.
 11 THE WITNESS: Okay.
 12 A. I can only speculate.
 13 Q. Are there records of approvals of loans
 14 like the Avenel loan?
 15 A. I assume there would be. Yes.
 16 Q. And who maintains those records?
 17 A. Oh, anybody in our department can probably
 18 get it.
 19 Q. You are in the department. Can you get
 20 it?
 21 A. What are you asking for?
 22 Q. The loan approvals.
 23 A. I'm not quite sure if I have authority to
 24 give that out, but --

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1 Q. Okay.
 2 A. -- I will ask. You will have to be
 3 specific as to what you are looking for.
 4 MR. SCHER: Let's look back a
 5 couple of pages on that one. I want to
 6 make sure I have a copy for -- let's mark
 7 that as Malik Exhibit 1.
 8 (Multipage loan approval,
 9 production numbers JH 00405
 10 through 00425 marked Exhibit
 11 No. 1 for identification.)
 12 BY MR. SCHER:
 13 Q. I have placed before you a document which
 14 is marked Malik Exhibit 1.
 15 (Handing Exhibit No. 1 to the
 16 witness.)
 17 A. Yes.
 18 Q. And just the process, I will describe it
 19 to you, and you just tell me whether I
 20 have accurately described it. It is a
 21 document which has on the front page John
 22 Hancock Life Insurance Company. At the --
 23 in the bottom right-hand corner, it says
 24 JH 00405, which we call a Bates stamp.

1 Q. Was this form introduced following the
 2 Manulife acquisition?
 3 A. Yes. Some of the form.
 4 Q. All right.
 5 A. Hold on a second. Let me look.
 6 (Pause.)
 7 (The witness viewing Exhibit
 8 No. 1.)
 9 A. The first four pages are new.
 10 Q. And JH 00409 is an old John Hancock form?
 11 A. Yes.
 12 Q. At the top of JH 00410, it says "Voted
 13 Investment." Do you see that?
 14 A. Which page are you on?
 15 Q. 410, at the very top.
 16 A. Yes, yes.
 17 Q. What is a voted investment?
 18 A. A voted investment is the form -- is one
 19 that is -- relates to the investment
 20 committee. It is the original -- from 409
 21 on is the form used to present to the
 22 original John Hancock investment committee
 23 that no longer was in place. The
 24 signature process was added to the front

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1 A. Yes.
 2 Q. And it continues through Bates stamp
 3 JH 00425.
 4 A. Yes.
 5 Q. Is that the document you have in front of
 6 you?
 7 A. Yes.
 8 Q. What is this document called?
 9 A. This is called an approval. It used to be
 10 called a vote by John Hancock, but it is
 11 called an approval, a commitment approval,
 12 loan approval.
 13 Q. And is it accurate to say that this is an
 14 example of the signature process?
 15 A. A begetting example. It has changed since
 16 then. It has become more descriptive than
 17 this form.
 18 Q. So my question is: How many other
 19 approvals had you presented? You
 20 presented this loan?
 21 A. Yes.
 22 Q. How many others had you presented in this
 23 process prior to August 16, 2004?
 24 A. I don't recall.

1 of it.
 2 Q. I see. Now is Malik Exhibit 1 the
 3 approval of John Hancock Life Insurance
 4 Company for the what we have called the
 5 Avenel loan?
 6 A. Yes.
 7 MR. SCHER: So the next exhibit
 8 number.
 9 (One-page memorandum dated
 10 August 17, 2004, to Mr. Malik
 11 from Ms. Coyne, production
 12 number JH 01174 marked Exhibit
 13 No. 2 for identification.)
 14 BY MR. SCHER:
 15 Q. I show you what I have had marked as Malik
 16 Exhibit 2.
 17 (Handing Exhibit No. 2 to the
 18 witness.)
 19 A. Yes.
 20 Q. And it is a document that is Bates stamped
 21 JH 01174. It appears to be a memorandum
 22 from Patricia C. Coyne, investment
 23 officer, to you?
 24 A. Yes.

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1 Q. Can you tell me what this is?
 2 A. This is a summary memo indicating the
 3 general terms of the approval.
 4 Q. But the actual approval is Malik 1?
 5 A. Correct.
 6 Q. What use do you put to Malik 2 in your
 7 work?
 8 A. It relates to the credit function.
 9 Manulife, because of their country's
 10 regulators, has in place credit officers
 11 who check the work of loan officers or
 12 investment officers, and this is an
 13 indication that she checked the work and
 14 it met the credit standards of the
 15 company. That's what I do now as well.
 16 Q. So Patricia Coyne is a credit evaluator?
 17 A. A credit officer.
 18 Q. A credit officer?
 19 A. Yes.
 20 Q. And she reviews the Malik 1, the approval?
 21 A. She also signed the approval, if you
 22 noticed.
 23 Q. Yes. Okay.
 24 A. Yes.

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1 Q. And her function was to perform a credit
 2 evaluation of the approval?
 3 A. Yes.
 4 Q. Is that right?
 5 A. Yes.
 6 Q. What country owns -- what country are you
 7 referring to?
 8 A. Canada.
 9 Q. So Manulife is a Canadian company?
 10 A. Correct.
 11 Q. And in Canada, there is a requirement that
 12 the loan and credit functions be separate?
 13 A. Correct.
 14 Q. And that was introduced into John Hancock
 15 after the acquisition?
 16 A. Yes.
 17 Q. And your new position has you as a credit
 18 evaluator as well?
 19 A. Credit officer.
 20 Q. Credit officer. Excuse me. And what
 21 specifically do you do as a credit officer
 22 as contrasted with that as a loan officer?
 23 A. I am still trying to figure that out.
 24 Q. Okay. Then I will ask my next question.

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1 (Laughter.)
 2 Q. If you have an answer, I would appreciate
 3 it.
 4 A. Sure. I evaluate other investment
 5 officers' loans to see if they meet the
 6 company guidelines and advise them on
 7 various loan parameters as a result.
 8 Q. Are the 11 items listed in Malik Exhibit 2
 9 numbered down that memo -- do you see
 10 them?
 11 A. Yes.
 12 Q. Do any of them represent company
 13 guidelines?
 14 MR. DAVIS: Objection.
 15 Q. Do any of them record, refer, or reflect
 16 company guidelines to which you made
 17 reference?
 18 A. Yes.
 19 Q. And could you specify which ones?
 20 A. Sure.
 21 MR. DAVIS: Objection. Could we
 22 pause a moment?
 23 THE WITNESS: Let me think a
 24 second.

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1 MR. DAVIS: This goes to
 2 underwriting guidelines?
 3 THE WITNESS: Yes.
 4 MR. DAVIS: And this is
 5 information that I would prefer -- is this
 6 information that --
 7 THE WITNESS: This doesn't
 8 really specify guidelines here. It really
 9 gives parameters, and because of the memo,
 10 you know they are inside the guidelines.
 11 MR. SCHER: Okay.
 12 MR. DAVIS: If we are going to
 13 get into a discussion of the actual
 14 guidelines, that is information that I
 15 think Hancock would regard as highly
 16 confidential, and so Mr. Koller's presence
 17 here, in that respect, this would be
 18 information that probably shouldn't be out
 19 in the general public or would be --
 20 shouldn't be available to potential loan
 21 applicants. You are always welcome to
 22 come back, Mr. Koller, and apply again.
 23 So if we are going to get into that
 24 subject area, I would ask that Mr. Koller

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1 not stay in the room for purposes of that
 2 portion of Mr. Malik's deposition.
 3 BY MR. SCHER:
 4 Q. Go ahead. You can answer the question.
 5 Certainly if we go into an area --
 6 A. What was the question again?
 7 Q. Do any of the items on this document,
 8 JH 1174, which was produced to us in
 9 discovery in this case, does it refer,
 10 reflect -- let's see -- refer, reflect, or
 11 record the company guidelines to which you
 12 made reference in your earlier testimony
 13 just moments ago?
 14 A. No.
 15 Q. Do they refer, record, or reflect in any
 16 way the company's guidelines?
 17 A. Only in the sense that they are within the
 18 guidelines.
 19 Q. Okay. And which of those numbered items,
 20 1 through 11, record, refer, or reflect --
 21 I am trying to see if I can get that triad
 22 correct this time -- record, refer, or
 23 reflect the company's guidelines?
 24 MR. DAVIS: Objection. I think

1 MR. SCHER: Counsel has
 2 requested that this portion of the
 3 deposition be designated as highly
 4 confidential.
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1 he said they don't record, refer, or
 2 reflect the guidelines except they are
 3 within the guidelines, so.
 4 MR. SCHER: Okay.
 5 Q. So which ones of those 11? Is 8 one that
 6 reflects the -- that describes that it is
 7 within the guidelines?
 8 A. It describes the parameters of the loan
 9 commitment but doesn't describe the
 10 guidelines.
 11 Q. No. But is 8 one that is relevant to that
 12 consideration?
 13 I'm not saying this clearly? Do
 14 you understand what I'm asking you?
 15 MR. DAVIS: Objection.
 16 A. Well, no, I don't, because you can look at
 17 any one of these and, with the exception
 18 of 11 --
 19 Q. All right.
 20 A. -- and --
 21 MR. SCHER: Mr. Koller, step out
 22 of the room for a moment.
 23 (Mr. Koller exiting the
 24 deposition room at 11:15 a.m.)

1 BY MR. SCHER:
 2 Q. What are the company's guidelines?
 3 MR. DAVIS: That is fine. Do
 4 you want specific items here? Or do you
 5 want --
 6 MR. SCHER: Just tell me what
 7 they are --
 8 MR. DAVIS: Sure.
 9 MR. SCHER: -- as they relate to
 10 the Avenel loan.
 11 A. The guidelines are --
 12 Q. Yes.
 13 A. -- are that given the rating of a loan --
 14 Q. The?
 15 A. The rating of the loan.
 16 Q. The rating being the letter?
 17 A. Yes.
 18 Q. The letter description?
 19 A. Yes.
 20 Q. BAA1?
 21 A. Right.
 22 Q. Okay.
 23 A. Actually, BBB.
 24 Q. On Malik 1, it says BAA1?

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1 A. Well, to the left of it.
 2 Q. I am sorry?
 3 A. MLI, BBB, that is the controlling one.
 4 Q. Okay. Thank you. I apologize.
 5 A. It has to have, for instance, 75 percent
 6 is a guideline. You can't go above
 7 75 percent.
 8 Q. 75 percent loan to value?
 9 A. Correct.
 10 Q. Okay.
 11 A. That the cash -- that the debt service
 12 coverage ratio has to be at least 120 or
 13 the debt service coverage ratio has to be
 14 at least 130, depending on the rating for
 15 the loan, or 150.
 16 So it depends on the rating of
 17 the loan, and then the quality of the
 18 loan, certain guidelines have to be met.
 19 Q. The 120, as applied to a BBB loan, what is
 20 the debt service coverage ratio required
 21 by the guidelines?
 22 A. It depends on if -- how the loan is -- if
 23 it gets a very good rating or not.
 24 (Pause.)

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1 (The witness viewing Exhibit
 2 No. 1.)
 3 A. It has a "good" quality classification in
 4 Exhibit 1.
 5 Q. What Bates number?
 6 A. 423.
 7 Q. Yes.
 8 A. You see the quality classification is
 9 "good."
 10 Q. Yes.
 11 A. So the minimum LTV would be 75 percent.
 12 For the 67 percent LTV, I would need a 120
 13 debt service coverage, on a 25-year
 14 amortization schedule, and a 25-year
 15 amortization schedule gives you 135 with
 16 the underwriting in place. So we would
 17 have to get a 120.
 18 However, there could be
 19 exceptions to those guidelines if they're
 20 stated in the approval.
 21 Q. And were they stated in the approval?
 22 A. No need.
 23 Q. Because it was within --
 24 A. Exceeded.

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1 Q. -- 120?
 2 A. Yes.
 3 Q. Now what other guidelines?
 4 A. What other guidelines? Those are -- those
 5 are the essential financial guidelines. I
 6 would have to look at the book to
 7 understand what the rest of it is. For
 8 instance, another guideline --
 9 THE WITNESS: How much more do
 10 you want me to give? I can give examples.
 11 MR. DAVIS: I think you answered
 12 his question.
 13 THE WITNESS: All right.
 14 MR. DAVIS: He will ask you
 15 additional questions as necessary.
 16 THE WITNESS: Okay.
 17 BY MR. SCHER:
 18 Q. The 10 percent breakeven interest rate, is
 19 that -- does that reflect a guideline?
 20 A. Yes.
 21 Q. And what guideline is that?
 22 A. That is the constant guideline. It has to
 23 be a certain constant.
 24 Q. And could you just explain to me what the

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1 constant guideline is?
 2 A. When you add the principal payment and the
 3 interest payment together times 12 divided
 4 by the principal, outstanding principal,
 5 that's the constant.
 6 Q. That has to equal 10?
 7 A. 10 or greater at that time, I believe.
 8 Right.
 9 Q. All right.
 10 A. If you look at page 405.
 11 Q. Yes.
 12 A. In the center it says, "Breakeven interest
 13 rate, 10.6 percent," right there.
 14 (Witness pointing.)
 15 Q. Oh, yes. And what does that mean?
 16 A. That means it exceeds the guidelines of
 17 10 percent.
 18 Q. Okay. Are there any other criteria
 19 reflected in the Malik 2?
 20 A. Let me think.
 21 (Pause.)
 22 A. Not that I can think of, besides the
 23 75 percent. An 8 -- 5.38 million dollars
 24 rental achievement reserve.

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1 Q. Is that reflective of a guideline?
 2 A. It indicates that it is not going to be
 3 fully -- may not be fully occupied at
 4 closing, and we would hold money back in
 5 order to maintain the guidelines.
 6 Q. And the reserve is \$150 per unit?
 7 A. No. The reserve is -- references the
 8 breakeven. In other words, \$150 a unit
 9 for apartments is what was used after the
 10 NOI, net operating income, to get the net
 11 cash flow. That is just a descriptive
 12 phrase, a descriptive number, that can
 13 deal with the reserve.
 14 Q. Were there any loan sizing criteria
 15 reflected in Malik 2?
 16 A. Loan sizing. That is the inverse of any
 17 criteria, so yes.
 18 Q. So they are implicit -- loan sizing is
 19 implicit in each of these criteria?
 20 A. Sort of, without stating it clearly.
 21 Q. Okay. Is the loan sizing criteria stated
 22 in Malik 1?
 23 A. I believe they are similar. Yes.
 24 Q. Can you find the reference to the loan

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1 MR. SCHER: Can we mark this as
 2 the next exhibit, please?
 3 (Multipage Application to John
 4 Hancock Life Insurance Company
 5 for a First Mortgage Loan,
 6 production numbers JH 00327
 7 through 00396 marked Exhibit
 8 No. 3 for identification.)
 9 BY MR. SCHER:
 10 Q. I will show you what I have had marked as
 11 Malik Exhibit 3.
 12 (Handing Exhibit No. 3 to the
 13 witness.)
 14 Q. This is a copy of the July 30, 2004
 15 application to John Hancock life insurance
 16 company for a first mortgage loan, Bates
 17 stamped JH 0327, and you can look through
 18 it, but this is the version which is, I
 19 believe, fully executed.
 20 A. Okay.
 21 Q. Can you tell me where in Malik 3 the loan
 22 sizing criteria is set forth?
 23 (Pause.
 24 (The witness viewing Exhibit

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1 sizing criteria in Malik 1?
 2 A. Page 410, the last box, the fourth line
 3 down after the first word.
 4 Q. "Funding"?
 5 A. Yes.
 6 MR. SCHER: I think we can
 7 invite Mr. Koller back in.
 8 MR. DAVIS: I will get him.
 9 MR. SCHER: Thanks.
 10 (Mr. Koller reentering the
 11 deposition room at 11:26 a.m.)
 12 (End of confidential portion of
 13 transcript.)
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1 No. 3.)
 2 A. 356, provision 49, and -- hold on a second
 3 -- in a couple of places.
 4 Q. Okay.
 5 (Further pause.)
 6 (The witness continues to view
 7 Exhibit No. 3.)
 8 A. Bates 343, 516.
 9 Q. 343?
 10 A. Yes.
 11 Q. How does --
 12 A. And page --
 13 Q. I am sorry?
 14 A. Page 342, clause 14.
 15 Q. Can you tell me how clause 14 on JH 342
 16 relates to the loan sizing criteria?
 17 A. The appraisals needs to be -- needs to
 18 allow that the loan is not more than
 19 75 percent of that value.
 20 Q. Therefore, the loan would be less than
 21 \$32 million if the value would not support
 22 75 percent?
 23 A. That is one of the criteria from the
 24 appraisal. Yes.

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1 Q. And how does the JH 343, clause 16, relate
 2 to the loan sizing?
 3 A. It indicates that you need a rate of not
 4 less than -- rent of not less than
 5 4.221126 -- 4,221,126, and a minimum debt
 6 service coverage ratio of 1.25 to 1.
 7 Q. How does that relate to the loan sizing?
 8 A. If the debt service coverage ratio is less
 9 than that, then the loan could be reduced.
 10 Q. And where does -- just is that what you
 11 believe paragraph 16 says?
 12 A. It is very specific. I think you need to
 13 read it yourself.
 14 Q. Okay. And the condition 49 on Bates stamp
 15 JH 00356?
 16 A. Yes.
 17 Q. And how does that relate to loan sizing
 18 criteria?
 19 A. Well, this was a project under
 20 construction that was partially built and
 21 leased, and condition 49 was the -- was
 22 negotiated by us and the borrower in order
 23 to give them flexibility to be able to
 24 fund the loan, even though they were not

1 A. Yes.
 2 Q. Do you have that before you?
 3 A. Yes.
 4 Q. At the top, it says, "FW: Request for
 5 approval to lower the Reserves to
 6 \$150/unit and to fund the Loan with 7..."
 7 A. Where are you reading?
 8 Q. At the very, very top. Do you see that at
 9 the very top of the page, the first -- the
 10 very, very top?
 11 (Counsel pointing.)
 12 Q. In other words, not just the top, but the
 13 very top?
 14 A. Yes.
 15 Q. Have you got me?
 16 A. Yes.
 17 Q. "FW colon"? Can you see that?
 18 A. I see it.
 19 Q. In other words, I am above your name?
 20 Okay?
 21 A. But I don't recognize --
 22 Q. Okay.
 23 A. -- where the rest of the e-mail is.
 24 Q. Okay.

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1 fully occupied and they did not meet the
 2 criteria of clause 14 and 16, by placing a
 3 portion of the \$32 million in a reserve at
 4 John Hancock until they met the criteria
 5 14 and 16.
 6 MR. SCHER: Let's take a short
 7 break.
 8 (Recess taken at 11:35 a.m.)
 9 (Recess ended at 11:42 a.m.)
 10 MR. SCHER: Mark this.
 11 (Two-page e-mail string, most
 12 recent e-mail dated August 11,
 13 2004, to Mr. Ferrie from
 14 Mr. Malik, production numbers
 15 JH 00131 and 00132 marked
 16 Exhibit No. 4 for
 17 identification.)
 18 BY MR. SCHER:
 19 Q. I show you what I have had marked as Malik
 20 Exhibit 4.
 21 (Handing Exhibit No. 4 to the
 22 witness.)
 23 Q. This is a document Bates stamped JH 00131
 24 and 132?

1 A. Do you have the rest of the e-mail?
 2 Q. I have -- it says, "Page 1 of 2"?
 3 A. But it is not -- it is -- something is
 4 missing.
 5 Q. Okay. What is -- how do you -- why do you
 6 say that?
 7 A. I just don't -- I don't see -- understand
 8 the reference of "FW: Request for
 9 approval."
 10 Q. Okay. From the line, Timothy Malik to
 11 John Ferrie, August 11, 2004, at
 12 7:39 p.m., do you see that?
 13 A. Yes.
 14 Q. And then down below, you see an e-mail
 15 from you to Ivor Thomas with copies to
 16 David Henderson and Patricia Coyne dated
 17 August 11, 2004, at 7:32 p.m. Do you see
 18 that?
 19 A. Um-hmm.
 20 Q. You might want to say yes --
 21 A. Yes.
 22 Q. -- because it makes you seem more
 23 intelligent on the record.
 24 MR. SCHER: That was a joke.

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1 MR. DAVIS: Stipulated.
2 MR. SCHER: Okay.
3 (Laughter.)
4 Q. Let's take the earlier e-mail first, --
5 A. Yes.
6 Q. -- the one that is seven minutes earlier.
7 A. Yes.
8 Q. Is it accurate to say that you were
9 seeking approval to lower the reserves to
10 \$150 per unit and to fund the loan with a
11 75 percent loan to value ratio and a
12 1.25 percent debt service coverage ratio?
13 A. I don't remember this, so let me read this
14 first before I answer.
15 Q. Please. I didn't mean to --
16 (Pause.)
17 (The witness viewing Exhibit
18 No. 4.)
19 A. Okay.
20 Q. Can you tell me --
21 A. What was the question again?
22 Q. Yes. Is it accurate to say that by this
23 memorandum -- this e-mail you were seeking
24 to reduce the reserves to \$150 per unit?

1 Q. Go ahead.
2 A. Go ahead.
3 Q. No. I am sorry.
4 A. No. I am done.
5 Q. I understand that you never discuss with
6 the borrower this constant -- this -- is
7 that true that you never discuss with the
8 borrower the --
9 A. We typically don't discuss --
10 MR. DAVIS: Please let him
11 finish.
12 THE WITNESS: Yes.
13 Q. -- the 10 percent constant coverage; is
14 that right?
15 A. Not --
16 MR. DAVIS: Objection.
17 You can respond.
18 A. Not to my knowledge, I mean.
19 Q. You said "typically," and that's what I am
20 asking about.
21 A. Right.
22 Q. So why is it not relevant to the borrower
23 to know that there is this 10 percent
24 constant coverage requirement?

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1 A. Yes.
2 Q. Why?
3 A. Well, I believe I recall now that when I
4 first -- we first sent the approval up the
5 chain for Ivor to sign, he noticed that in
6 some -- one instance that it did not meet
7 the 10 constant at the 1.25 cover for the
8 rental achievement.
9 Q. Okay. And because it did not meet the 10
10 constant coverage, it -- you --
11 A. It didn't meet the credit guidelines.
12 Q. It didn't meet the credit guidelines. Did
13 you tell that to the borrower?
14 A. No. It is not relevant to the borrower.
15 Q. Okay. Why is it not relevant to the
16 borrower to know that it did not meet the
17 credit guidelines with a \$250 per unit
18 reserve?
19 A. This is internal underwriting that we
20 never discuss with the borrower. That is
21 how we -- it has only to do with the
22 Hancock credit guidelines.
23 Q. The --
24 A. There was a --

1 A. It's a decision -- a way of us within the
2 company to discuss risk.
3 Q. How does the 10 percent constant coverage
4 way of discussing risk differ from the
5 other ways in which you discuss risk, like
6 the 75 percent loan to value and the
7 1.25 percent debt service coverage ratio?
8 Are they all the -- all mechanisms for
9 discussing risk?
10 A. Yes.
11 Q. So why is it that the loan-to-value ratio
12 and debt service coverage ratio is
13 discussed with the borrower and the
14 10 percent constant is not?
15 A. Because --
16 MR. DAVIS: Objection.
17 You can respond.
18 MR. SCHER: Let me meet that
19 objection.
20 Q. The loan-to-value ratio is disclosed to
21 the borrower; right?
22 A. Um-hmm.
23 Q. Yes?
24 MR. DAVIS: You have to respond.

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1 A. Yes.
 2 Q. And the debt service coverage ratio is
 3 disclosed to the borrower?
 4 A. Yes.
 5 Q. In fact, the precise numbers that the
 6 borrower is required in this case, in the
 7 Avenel situation, are set forth in the
 8 application and agreed to in the loan
 9 application; am I right?
 10 A. Yes.
 11 Q. Why is the debt service coverage -- sorry
 12 -- why is the 10 percent constant coverage
 13 not?
 14 A. It seems irrelevant.
 15 Q. Why is it irrelevant to the borrower?
 16 A. Because the 10 percent constant relates to
 17 our credit policy internally, and the
 18 industry standard is ordinarily debt
 19 service coverage ratio and LTV.
 20 Q. It is true that the 10 percent constant
 21 coverage is a criteria which was required
 22 to be satisfied in order for the loan to
 23 be approved; am I right?
 24 MR. DAVIS: Objection.

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1 MR. SCHER: What is your basis?
 2 MR. DAVIS: I think it
 3 mischaracterizes the record actually, but
 4 go ahead.
 5 MR. SCHER: Well, that is not --
 6 A. It is not required. Another way to do it
 7 would be to state it as an exception in
 8 the approval and the reasons for it.
 9 Q. Okay. But it is certainly a hurdle over
 10 which a loan approval must be overcome in
 11 order to be granted?
 12 A. Yes.
 13 Q. So why is it irrelevant to the borrower if
 14 it's a -- if the approval of the loan is
 15 contingent on satisfying this criteria?
 16 A. Because whether we state it as an
 17 exception in our approval documents or we
 18 change our estimate of reserves, it is --
 19 it doesn't make any difference to the
 20 borrower. All the borrower should care
 21 about is getting the commitment, which he
 22 has gotten. How we do our approvals is
 23 irrelevant.
 24 Q. How does the reserve requirement impact

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1 the borrower?
 2 A. Not at all.
 3 Q. Why not?
 4 A. Because we're not requiring him to hold
 5 those reserves. They are purely
 6 theoretical reserves in the underwriting.
 7 Q. So if it is purely theoretical, why do you
 8 need approval to do it?
 9 A. We don't need approval to do it. We need
 10 approval to get the commitment.
 11 Q. Well, you are asking for approval to lower
 12 the reserves?
 13 A. Within the -- within our underwriting. In
 14 underwriting, it is a proforma estimate of
 15 what we think is a relative, reasonable
 16 characterization of the cash flow to be
 17 expected from the security.
 18 Q. If the request for approval to lower the
 19 reserves had been refused -- am I -- is it
 20 accurate to say that the loan commitment
 21 would not have been made?
 22 A. The signing authority has to -- asked me
 23 to write -- to put the memo together so
 24 that we could lower the reserves.

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1 Q. You didn't know in advance of making the
 2 request that it would be granted, did you?
 3 A. I did.
 4 Q. You did?
 5 A. Yes. Paper the file with this. Correct.
 6 Q. Say again?
 7 A. Yes. I papered the file with this.
 8 Q. You papered the file with this?
 9 A. Yes.
 10 Q. But there was a moment in time when you
 11 did not know whether or not the request
 12 would be granted; am I right?
 13 A. No. I knew it would always be granted.
 14 He caught a technical error with my
 15 approval document and just corrected it.
 16 Q. What are you -- so can you explain to me
 17 the e-mail that you sent seven minutes
 18 later to Mr. Ferrie in which you say, "I
 19 guess I will try, one more time, the
 20 bureaucratic approach"?
 21 I won't criticize your spelling
 22 of "bureaucratic." It is just a typo.
 23 A. It must be.
 24 Q. "I'll let you know how hard he laughs."

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1 What are you -- isn't it
 2 accurate to say that "I'll let you know
 3 how hard he laughs" suggests that he was
 4 going to refuse the request?
 5 MR. DAVIS: Objection.
 6 A. I'm not quite sure who I am relating --
 7 who I am referring to as the "he."
 8 Q. Ivor Thomas?
 9 A. Yes.
 10 Q. So --
 11 A. I don't know if it is Ivor or not.
 12 Q. I want you to explain to me why you say in
 13 this August 11th, 7:39 p.m. e-mail, sent
 14 seven minutes after you sent your e-mail
 15 to Ivor Thomas, why you said to
 16 Mr. Ferrie, "I'll let you know how hard he
 17 laughs."
 18 A. I can only speculate.
 19 Q. You have no recollection whatsoever; is
 20 that right?
 21 A. I recall that Ivor caught the error with
 22 the coverage and asked us to lower
 23 something to make it work, and I could
 24 only assume and I can only speculate that

1 A. Yes. He rarely laughs.
 2 Q. Honestly, Mr. Malik, I don't understand.
 3 "I guess I will try, one more time, the
 4 bureaucratic approach." What is the
 5 bureaucratic approach?
 6 A. The bureaucratic approach must be to get
 7 Ivor to lower the reserves, to go along
 8 with lowering the reserves from 250 to 150
 9 so at a full rental achievement reserve
 10 and a 1.25 coverage it still will equal --
 11 you will still cover the constant, 10, the
 12 10 constant, 10.
 13 Q. What is it about lowering the reserve from
 14 250 to 150 that would cause Mr. Thomas or
 15 a person in his position to laugh?
 16 A. Because --
 17 MR. DAVIS: Objection.
 18 A. -- it goes outside the guidelines of
 19 typically wanting 250 a unit for reserves
 20 in our abstract analysis of what the
 21 property will cash flow, but because this
 22 was a brand new property that didn't need
 23 a lot of -- a lot of work on units when
 24 people vacated and came back, 150 turned

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1 that refers to John's idea to lower the
 2 reserves to \$150.
 3 Q. Why would that cause laughter on the part
 4 of Mr. Thomas?
 5 MR. DAVIS: Objection.
 6 Q. Why would the lowering of the reserves to
 7 \$150 per unit to meet the deficiency
 8 Mr. Thomas had identified cause him to
 9 laugh?
 10 MR. DAVIS: Objection.
 11 MR. SCHER: What is your basis?
 12 MR. DAVIS: The basis of the
 13 objection is that it calls for
 14 speculation.
 15 MR. SCHER: Okay.
 16 Q. If you know, tell me.
 17 MR. SCHER: I withdraw that.
 18 Q. Tell me why you thought that it would
 19 cause Mr. Thomas to laugh.
 20 A. I believe that was written for John's
 21 benefit to let him know that we don't like
 22 to lower reserves to \$150 a unit.
 23 Q. Is that your best answer?
 24 MR. DAVIS: Objection.

1 out to be fine.
 2 My comment was meant to let John
 3 Ferrie know that we don't like lowering
 4 reserves if we can avoid it.
 5 Q. So who is the one who wanted the reserves
 6 lowered from 250 to 150?
 7 A. Well, I can only speculate, but I think it
 8 was John. Ivor wanted us to make the 150
 9 -- wanted us to make the 10 constant, and
 10 my memo explains -- my memo explains how
 11 to do it.
 12 Q. Your e-mail to Mr. Thomas explains how to
 13 do it; right?
 14 A. Right.
 15 Q. Why did Mr. Ferrie want that accomplished?
 16 A. He wanted to fund the loan. He wanted to
 17 commit the loan.
 18 Q. And why is that?
 19 A. Because that's his job.
 20 Q. Is his desire to commit the loan any
 21 different than your desire to commit the
 22 loan --
 23 MR. DAVIS: Objection.
 24 Q. -- as far as you know?

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1 MR. DAVIS: Objection.
 2 Q. For example, does he get a commission for
 3 committing the loan?
 4 A. No.
 5 Q. It is just as good for him as it is for
 6 you?
 7 MR. DAVIS: Objection.
 8 Q. Is that right?
 9 A. Yes.
 10 Q. It goes as much to his performance as it
 11 goes to your performance?
 12 A. Yes. Similar.
 13 Q. And you both wanted to get this loan
 14 committed?
 15 A. Yes.
 16 Q. Right?
 17 A. Yes.
 18 Q. In your e-mail to Mr. Thomas at page
 19 JH 00132, you make reference to -- you
 20 make, I guess, arguments favoring the
 21 reduction of the reserve amount to 150;
 22 right?
 23 A. Yes.
 24 Q. And one of them is that the rental market

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1 A. It highlighted another production issue,
 2 yes.
 3 Q. And finally you made reference to
 4 competition from GMAC; right?
 5 A. Yes.
 6 Q. And why was that reference made?
 7 A. So that he -- just to indicate that it was
 8 a good deal for John Hancock.
 9 Q. The corroboration of GMAC's willingness to
 10 lend at \$33 million suggested that this
 11 would be a good loan for John Hancock; is
 12 that right?
 13 A. Yes.
 14 MR. SCHER: Mark this.
 15 (One-page e-mail dated
 16 August 11, 2004, to Mr. Kelly
 17 from Mr. Ferrie and attachment,
 18 production numbers JH 00133 and
 19 00134 marked Exhibit No. 5 for
 20 identification.)
 21 BY MR. SCHER:
 22 Q. I show you what I have had marked as Malik
 23 Exhibit 5.
 24 (Handing Exhibit No. 5 to the

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1 demand is strong; right?
 2 A. Yes.
 3 Q. What is the basis for that?
 4 A. They had a very good leasing -- initial
 5 lease up, with a long waiting list.
 6 Q. And then you make a reference to the rate
 7 for -- of interest on treasuries; right?
 8 A. Right.
 9 Q. And just explain to me what the dropping
 10 of -- by 15 bps since the rate lock --
 11 A. Basis.
 12 Q. -- has to do with this subject of your
 13 e-mail.
 14 A. Bps means basis points.
 15 Q. Yes.
 16 A. It is pointed out to Mr. Thomas that the,
 17 if we were to put the loan out, if we were
 18 to -- didn't give the commitment, it would
 19 be hard to replace it with as high an
 20 interest rate with another loan at that
 21 time.
 22 Q. So that motivated -- that further
 23 justified making this exception to your
 24 general policies; right?

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1 witness.)
 2 Q. This is an e-mail from you -- I am sorry
 3 -- from John Ferrie to kelly@ckpp.com re:
 4 Avenel.
 5 A. Right.
 6 Q. That is Bates stamped JH 00133 and 134.
 7 (Pause.)
 8 (The witness viewing Exhibit
 9 No. 5.)
 10 Q. Have you before today ever seen this?
 11 A. Probably.
 12 Q. Can you tell me -- at or about the time it
 13 was sent? It doesn't show your name on
 14 it.
 15 A. It says August 11th.
 16 Q. Yes.
 17 A. 3:34. Right. 2004. What else do you
 18 want?
 19 Q. Did you see it on or about the time it was
 20 sent?
 21 A. I don't recall.
 22 Q. Do you know who Rob is?
 23 A. Rob Kelly?
 24 Q. Yes.

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1 A. Yes.
 2 Q. Who is that?
 3 A. Isn't he one of the principals of the
 4 borrower?
 5 Q. No.
 6 A. The brother of one of the principals of
 7 the borrower.
 8 Q. Have you ever met him?
 9 A. Yes.
 10 Q. Rob Kelly?
 11 A. I believe I did.
 12 Q. Do you know why John characterized -- what
 13 John was characterizing as a slight
 14 hiccup?
 15 A. I can only speculate, but I would
 16 speculate --
 17 MR. DAVIS: Don't speculate.
 18 THE WITNESS: Okay.
 19 MR. DAVIS: If you know.
 20 Q. Attached to the e-mail at JH 00134 is a
 21 document at the top of which says
 22 Exhibit 1A?
 23 A. Yes.
 24 Q. And at the bottom, it says, "Avenel

1 Q. This one shows reserves based on loan to
 2 value and reserves based on 10 percent
 3 constant.
 4 A. Okay. Then this 10 percent constant is
 5 there. That's good.
 6 Q. That's good?
 7 A. Yes.
 8 Q. Why? Why is that good?
 9 A. More criteria.
 10 Q. What do you mean by that?
 11 A. More fully outlines what is important to
 12 us.
 13 Q. So that the 10 percent constant is
 14 important to you?
 15 A. It looks like it was in this instance.
 16 Q. But and it looks like the loan would not
 17 have been funded had the 10 percent
 18 constant not been met --
 19 MR. DAVIS: Objection.
 20 Q. -- based on the --
 21 A. I don't recall. I think the basis for
 22 funding is still in the commitment,
 23 clause 46. Now this is -- becomes part of
 24 the commitment, so I'm not sure how they

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1 Exhibit 1A 8-11-04.xls"; right?
 2 A. Yes.
 3 Q. So that is an Excel sheet with that date
 4 on it?
 5 A. Yes.
 6 Q. Is that right?
 7 A. Yes.
 8 Q. And this is one of many, many Excel sheets
 9 in this format?
 10 A. Yes.
 11 Q. And they all come from your computer?
 12 A. Or John's.
 13 Q. Or John Ferrie's computer?
 14 A. Yes.
 15 Q. Is this a template that is used by John
 16 Hancock in connection with the preparation
 17 of reserve calculations?
 18 A. I believe John and I used this on a number
 19 of deals. Yes.
 20 Q. Okay. And can you tell me by reviewing
 21 this edition of Exhibit 1A, the August 11,
 22 '04 edition, what the slight hiccup was?
 23 A. I can only speculate what the difference
 24 is between this one and prior exhibits.

1 tie in without reading the commitment
 2 again.
 3 Q. I'm sure I don't understand what you mean
 4 by that. Could you explain?
 5 A. Ordinarily the funding limit is debt
 6 service coverage, and instead of constant,
 7 ordinarily there is debt service coverage
 8 there. But I'm not quite sure what -- how
 9 the document evolved, the commitment
 10 evolved.
 11 In a typical loan, they meet LTV
 12 coverage -- LTV limits and debt service
 13 coverage.
 14 Q. Right.
 15 A. In this instant, I see constant --
 16 Introduced?
 17 A. -- as a hurdle as opposed to debt service
 18 coverage. So I'm not quite sure if that
 19 is a change and if the commitment changed
 20 accordingly. I have to go back and review
 21 the commitment.
 22 Q. So the commitment is contained in Malik
 23 Exhibit 1; right?
 24 A. Malik Exhibit 3.

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1 Q. Exhibit 3? I apologize.
 2 A. Let's see.
 3 (Pause.)
 4 (The witness viewing Exhibit
 5 No. 3.)
 6 A. And reviewing that, the commitment only
 7 deals with debt service coverage, so.
 8 Q. So the 10 percent constant was introduced
 9 into the commitment process?
 10 MR. DAVIS: Objection.
 11 A. I don't know.
 12 Q. Well, you know --
 13 A. Possibly.
 14 Q. It appears that way?
 15 A. I don't know.
 16 Q. Why don't you know? You were the
 17 presenter of the loan?
 18 A. Yes.
 19 Q. You have the loan approval?
 20 A. But John was the presenter of this
 21 (pointing to Exhibit No. 5).
 22 Q. So?
 23 A. So you would have to ask him.
 24 Q. Where did he present that?

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1 A. Didn't he present it to Rob, he said? Rob
 2 Kelly.
 3 Q. But Rob Kelly doesn't approve the loan,
 4 does he? Of course not.
 5 So what are you suggesting? The
 6 fact that Rob Kelly received Malik
 7 Exhibit 5, does that change what is in the
 8 application or commitment?
 9 A. Because you put "Malik Exhibit 5" doesn't
 10 mean it came from me.
 11 Q. I am not suggesting it came from you. I
 12 am asking you whether the introduction of
 13 the new criteria, namely the 10 percent
 14 constant, --
 15 A. I don't know.
 16 MR. DAVIS: Please, let him
 17 finish his question --
 18 THE WITNESS: Okay.
 19 MR. DAVIS: -- because I want to
 20 get my objection in.
 21 THE WITNESS: Okay.
 22 BY MR. SCHER:
 23 Q. Is it accurate to say that the loan
 24 constant hurdle was introduced into the

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1 loan commitment process after the loan
 2 application was submitted?
 3 MR. DAVIS: Objection.
 4 A. I'm not quite sure what you mean by "loan
 5 commitment process."
 6 Q. The application.
 7 A. The application?
 8 MR. DAVIS: The same objection.
 9 A. I -- the commitment -- I think the
 10 commitment speaks for itself.
 11 Q. Okay.
 12 A. I don't see it in there.
 13 Q. Okay. That is fair enough.
 14 MR. SCHER: Mark this.
 15 (One-page e-mail dated
 16 August 11, 2004, to Mr. Ferrie
 17 from Mr. Malik, production
 18 number JH 00135 marked Exhibit
 19 No. 6 for identification.)
 20 BY MR. SCHER:
 21 Q. I show you what I have had marked as Malik
 22 Exhibit 6.
 23 (Handing Exhibit No. 6 to the
 24 witness.)

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1 A. Um-hmm.
 2 Q. It is an e-mail from you to John Ferrie
 3 dated August 11, 2004, in the morning,
 4 10:54 a.m., Bates stamped JH 00135.
 5 (Pause.)
 6 (The witness viewing Exhibit
 7 No. 6.)
 8 Q. What do you mean -- the subject is Avenel
 9 hedge loss.
 10 A. Yes.
 11 Q. What does that mean? What information are
 12 you conveying in this e-mail?
 13 A. That we would -- if we unwound what we had
 14 hedged, it would cost 355 -- \$355,000 as
 15 of that date.
 16 Q. So what does unwound mean?
 17 A. If we sold off the securities that fixed
 18 the -- the derivatives that fixed the
 19 interest rate for a portion of the loan.
 20 Q. How much did you sell off?
 21 A. How much? We wouldn't -- we didn't sell
 22 off. If we would have sold off.
 23 Q. Well, I don't understand. That is
 24 probably not the first thing.

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1 So if you had hedged, just
2 explain to me what you mean by that.
3 A. I believe you buy securities, fixed
4 securities, that if interest -- the
5 treasuries go up or down would be
6 irrelevant to the return on a certain
7 portion of funds, so it fixes the treasury
8 risk. That portion of the interest rate,
9 it fixes the rate of return, the interest,
10 the yield at a certain amount.
11 Q. Had there in fact been a hedge?
12 A. I believe there was. Yes.
13 Q. And the hedge was on the date of the
14 interest rate lock?
15 A. Yes, yes.
16 Q. What was the amount of the hedge?
17 A. I don't recall.
18 Q. Was it in the entire \$32 million?
19 A. I don't think it was.
20 Q. All right.
21 A. Certain accounts require that you hedge
22 immediately because of their commitments.
23 Not all of them. So a portion of it was
24 hedged.

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1 Q. And who participates in this hedging
2 process? Do you?
3 A. No.
4 Q. How do you know of it?
5 A. I eventually get back something -- the day
6 it is rate locked, commit the funds, they
7 allocate the funds to the funds, and then
8 immediately the funds hedge if they need
9 to hedge to their portion of the loan.
10 Q. And what records are there that show the
11 extent to which the loan was hedged?
12 A. We get back -- well, there should be --
13 eventually -- I mean you immediately see,
14 a day or so after, if not the same day,
15 which funds took a piece -- what portion
16 of the loans that they took.
17 Q. That is on the date of the hedge?
18 A. Pretty much.
19 Q. On the date of the interest lock?
20 A. The date of the interest lock. The way
21 Hancock did is they allocated the funds
22 before they unlocked the rate, so I could
23 know which funds immediately have which
24 portion of the loan. And sometimes I

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1 don't get it until the next day in
2 writing, but whatever.
3 But I don't -- at that -- I
4 don't have knowledge of which funds need
5 to hedge their bets at the day of interest
6 rate. Somebody else knows that.
7 Q. Okay.
8 MR. SCHER: Mark this.
9 (Interest Rate Circle
10 Notification, production
11 numbers JH 00913 through 00920
12 marked Exhibit No. 7 for
13 identification.)
14 BY MR. SCHER:
15 Q. I show you what I have marked as Malik
16 Exhibit 7.
17 (Handing Exhibit No. 7 to the
18 witness.)
19 Q. Is that the information that you received
20 regarding the hedge loan?
21 (Pause.)
22 (The witness viewing Exhibit
23 No. 7.)
24 A. Yes.

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1 Q. And is it accurate to say that the
2 allocation is indicated at the bottom
3 third of the page Bates stamped JH 00913?
4 A. Yes.
5 Q. And but you don't know the extent to which
6 any one of these allocated -- allocatees
7 is required to hedge; is that right?
8 A. Not -- no. Typically I don't, no.
9 Q. Do you know in this case?
10 A. In this case, I believe when I asked about
11 the hedging I was told later which funds
12 had hedged, but I don't recall now.
13 Q. Who knows what funds hedged?
14 A. Whoever I asked, and I forget who I asked.
15 Q. What department? What country was it?
16 A. To the U. S.
17 Q. Get me as close as you can.
18 A. ISG, I think it is called. I'm not sure
19 what that means, and I'm not quite sure
20 who hedges that. I think it is somebody
21 on a trading desk in the bond department,
22 but I'm not positive.
23 Q. Are there records which record, refer or
24 reflect the extent to which the

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1 \$32 million was hedged?
 2 A. Yes. I believe there should be.
 3 Q. And what are those records called?
 4 A. What are they called?
 5 Q. Yes.
 6 A. I don't know what they are called.
 7 Q. What are --
 8 A. I just asked what -- who -- when I asked
 9 for what the hedge loss was if we broke
 10 the hedge, I came up with the \$355,000.
 11 Somebody knew what it was, and they had it
 12 on probably a worksheet, an Excel
 13 worksheet, and broke out what the loss
 14 would be. We may have produced that, I
 15 believe, but.
 16 Q. You have the --
 17 A. I wouldn't know unless I asked that
 18 somebody produce it.
 19 Q. So are you saying that Malik 6, that is
 20 that number, \$355,000, is a result of a
 21 conversation you had with someone --
 22 A. Right.
 23 Q. -- whose responsibility it is to --
 24 A. And --

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1 MR. DAVIS: Let him finish his
 2 question.
 3 Q. -- to measure, measure the hedge loss;
 4 right?
 5 A. Yes. And they may have sent me something,
 6 you know, in writing, too, but I don't
 7 know. And so --
 8 Q. Yes.
 9 A. Okay. Whatever.
 10 MR. SCHER: I probably just have
 11 overlooked it, but I don't see it in my
 12 records.
 13 MR. DAVIS: I can check.
 14 MR. SCHER: I would appreciate
 15 that.
 16 MR. DAVIS: We have done our
 17 best to comb the files. I would have to
 18 go back and take a look.
 19 MR. SCHER: I understand.
 20 BY MR. SCHER:
 21 Q. And that hedge is at that -- in a forward
 22 commitment, persists for the duration of
 23 the commitment; is that right?
 24 A. Yes.

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1 Q. Is there any manipulation trading to --
 2 A. Usually not.
 3 Q. Okay.
 4 A. Usually not.
 5 MR. DAVIS: Please let him
 6 finish his question before you begin
 7 answering.
 8 Whack.
 9 MR. SCHER: I don't mind.
 10 BY MR. SCHER:
 11 Q. Do you know whether in this case there was
 12 any change in the hedge?
 13 A. No.
 14 Q. You don't know?
 15 A. No.
 16 Q. And who is responsible for that area
 17 today?
 18 MR. DAVIS: For that area, you
 19 mean hedging?
 20 MR. SCHER: Hedging.
 21 A. I really don't know.
 22 Q. Somebody in the bond department?
 23 A. Possibly. That is our -- a subdepartment
 24 of the bond department.

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1 Q. Okay.
 2 MR. SCHER: Mark this.
 3 (One-page e-mail dated
 4 August 12, 2004, to
 5 Mr. Henderson from Mr. Malik,
 6 production number JH 01175
 7 marked Exhibit No. 8 for
 8 identification.)
 9 BY MR. SCHER:
 10 Q. I show you what I have had marked as Malik
 11 Exhibit 8.
 12 (Handing Exhibit No. 8 to the
 13 witness.)
 14 Q. This is an e-mail from you to David
 15 Henderson --
 16 A. Yes.
 17 Q. -- dated August 12, 2004, at 5:32 p.m. I
 18 ask you to take a moment and review it.
 19 When you have completed your review,
 20 please let me know.
 21 (Pause.)
 22 (The witness viewing Exhibit
 23 No. 8.)
 24 A. Okay.

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1 Q. Is it accurate to say that after you sent
2 your e-mail to Mr. Thomas on August 11th
3 at 7:32 p.m. --
4 A. Yes.
5 Q. -- Mr. Thomas did laugh?
6 A. No. He rarely laughs.
7 Q. Was there -- do you have any recollection
8 -- is it accurate to say that there was
9 push-back or resistance to the proposal
10 that you were making?
11 A. I can't recall. I really can't.
12 Q. Is there -- can you tell me, number one,
13 Mr. Henderson was your team leader?
14 A. Yes.
15 Q. Is that right?
16 A. Yes.
17 Q. And Mr. Thomas was the approver --
18 A. Yes.
19 Q. -- of the loan? And --
20 A. Well, yes, I think so.
21 Q. Among the approvers of the loan?
22 A. Yes.
23 Q. In this e-mail, your second paragraph, you
24 say, "To make the numbers work, we would

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1 A. Right.
2 Q. How can you --
3 A. Because his estimate is based on his
4 judgment, and our estimate is based on our
5 judgment.
6 Q. There was an element of not wanting to
7 lose the deal in connection with your
8 making the numbers work; am I right about
9 that?
10 A. Yes.
11 Q. And so you were asking Mr. Henderson to
12 help you out to figure out a way to make
13 the numbers work so that the criteria,
14 including the 10 percent constant, in this
15 case, so that the criteria, the 10 percent
16 constant --
17 MR. SCHER: Let me start all
18 over.
19 Q. So you were asking Mr. Henderson to help
20 you out to figure out a way to make the
21 numbers work so that the 10 percent
22 constant criteria could be satisfied; am I
23 right?
24 A. Partially.

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1 need to assume that the expense per unit
2 is 4,957 a unit instead of the original
3 \$5,527 a unit"?
4 A. Yes.
5 Q. Right?
6 A. That's what -- I think that's what it
7 says.
8 Q. What do you mean by "making the numbers
9 work"?
10 A. Looking at the memo or the e-mail, it
11 looks like the 10 constant, coming up with
12 another way of making the 10 constant
13 hurdle work, other than lowering the
14 reserve estimate down to 150, explaining
15 the risk inherent in the property.
16 Q. How can you just change the expenses per
17 unit from what was the borrower's
18 estimate?
19 A. Because the borrower's --
20 MR. DAVIS: Objection.
21 You can respond.
22 THE WITNESS: Okay.
23 Q. The borrower's estimate is this 5,200 --
24 5,500 dollar amount?

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1 Q. Well, how am I wrong?
2 A. You will notice that Mr. Thomas is also
3 copied on it.
4 Q. Yes. So you are asking him as well?
5 A. I am just outlining the risks.
6 Q. Okay.
7 A. And how conservative a loan it already is,
8 so. He considered all of those factors in
9 deciding if a 10 percent constant is an
10 important hurdle the way it is
11 underwritten.
12 Q. And agreed to reduce the reserves so that
13 the 10 percent constant hurdle could be
14 achieved?
15 A. I assume so. Yes.
16 Q. And that assumption is based on your
17 knowledge; right?
18 A. That assumption is based on the
19 information I have today without pulling
20 out my calculator and see how it was
21 actually done.
22 Q. I see.
23 MR. SCHER: We can take a break
24 now for the lunch hour, and you can take

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1 -- is 45 minutes okay with you?
 2 MR. DAVIS: Yes. We will shoot
 3 for that.
 4 (Whereupon, a luncheon recess
 5 was taken at 12:30 p.m.)
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1 notes that the hedge loss was \$355,000 on
 2 August 11th. Do you recall reviewing that
 3 document?
 4 A. Yes.
 5 Q. Did you calculate the amount of hedge loss
 6 which would have occurred on the date the
 7 loan approval was made, August 17, 2004?
 8 A. No.
 9 Q. Is that calculation capable of being
 10 performed?
 11 A. I would think so -- oh, at that date?
 12 Q. Could one now today calculate what the
 13 hedge loss would have been on August 17,
 14 2004?
 15 A. I don't know.
 16 Q. And is it accurate to say that if the loan
 17 commitment had not been made that John
 18 Hancock would have put out \$355,000 as of
 19 August 11th -- we don't know what the
 20 amount would be as of August 17th -- and
 21 would have had to refund all but the
 22 \$5,000 application fee?
 23 MR. DAVIS: Objection. You say
 24 that that's what was required under the

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1 AFTERNOON SESSION
 2 1:25 P.M.
 3 CONTINUED DIRECT EXAMINATION OF MR. MALIK
 4 BY MR. SCHER:
 5 Q. Am I correct when I say that Malik
 6 Exhibit 1, the document which is Bates
 7 stamped JH 00405 through 425, was the
 8 internal loan approval?
 9 A. Yes.
 10 Q. And this document was never provided to
 11 the borrower; am I right?
 12 A. Yes.
 13 Q. And the, likewise, the document Malik
 14 Exhibit 2, which is the e-mail or the
 15 memorandum from you to Patricia Coyne, the
 16 credit officer, of August 17, 2004, which
 17 is Bates stamped JH 01174, that document
 18 was not provided to the borrower; am I
 19 right?
 20 A. Yes.
 21 Q. I don't know. Somehow I have the Bates
 22 stamp number somewhere else. The document
 23 which is Bates stamped JH 00135, your
 24 August 11, 2004 e-mail to John Ferrie,

1 terms of the agreement?
 2 Q. Would that have happened?
 3 MR. DAVIS: Objection.
 4 MR. SCHER: Okay.
 5 A. I don't understand your question. You
 6 will have to give it to me again.
 7 Q. Okay. So we are at August 17, 2004, and
 8 the loan approval is not given, rejected,
 9 the signatures are not obtained. As a
 10 result of that, the application fee and
 11 processing fee are refunded?
 12 A. The application --
 13 MR. DAVIS: Objection.
 14 You can respond.
 15 A. The application and commitment fee are
 16 refunded.
 17 Q. Yes.
 18 A. The processing fee was the \$5,000 that is
 19 not refundable.
 20 Q. That's not refundable?
 21 A. Right.
 22 Q. As of August 17, 2004, the -- whatever
 23 hedge loss had been sustained as of that
 24 moment would be sustained?

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1 MR. DAVIS: Objection.

2 A. I believe that's the case, but I would

3 have to again look at the loan document --

4 at the commitment to get confirmation on

5 that.

6 Q. That is that if the loan application is

7 rejected, does John Hancock get to keep

8 any of the processing fees?

9 A. I don't believe so.

10 Q. Or commitment fees?

11 A. I don't believe so.

12 Q. So based on your best belief --

13 A. Excuse me. You said processing fees?

14 Q. I keep on saying that. I apologize. It

15 is the 960?

16 A. Right.

17 Q. Not the 965, not the five?

18 A. Right.

19 Q. So is it accurate to say that the hedge

20 loss as of August 17, if any, would have

21 to have been absorbed by John Hancock had

22 the loan commitment not been made?

23 MR. DAVIS: Objection.

24 A. I'm not sure, but I believe so.

1 close --

2 Q. What --

3 A. -- as long as it is inside the outside

4 closing date.

5 Q. All right.

6 A. As long as the requested closing date is

7 within the outside closing date.

8 Q. Okay. Internally within John Hancock,

9 what process is undertaken to fund the

10 loan? In other words, prior to the time

11 that the \$32 million is disbursed to the

12 borrower, what does John Hancock have to

13 do internally?

14 A. We collect all the documents. We produce

15 a closing statement. We have the borrower

16 sign the closing statement. We request

17 the funds and close the loan on the day

18 that it's required. There is no other

19 approvals required as long as the loan

20 meets the criteria of the commitment.

21 Q. So the form work that, if you will, to get

22 the cash from the John Hancock, what form

23 is employed for that purpose?

24 A. I don't know. That -- we have a closer

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1 Q. Continuing in the process, after the loan

2 commitment was made, the borrower would,

3 within the period of time provided for in

4 the loan commitment, request that the loan

5 be funded, the \$32 million loan be funded?

6 That would be the normal process; am I

7 right?

8 MR. DAVIS: Objection.

9 A. I am not quite -- you have to again

10 rephrase that question.

11 Q. Okay. I am trying to have you tell me

12 what the closing of the loan process

13 includes. So could you do that?

14 A. Sure. There is a whole bunch of criteria

15 in the commitment regarding reports,

16 physical report, environmental reports,

17 title work, title insurance, and a certain

18 occupancy, and a certified rent roll to

19 verify that occupancy, and other criteria

20 that are outlined.

21 Q. All right.

22 A. When all of that is provided, then the

23 borrower would estimate what he thinks --

24 when he would like to close it, and we

1 who is assigned to it --

2 Q. Yes.

3 A. -- who is on the other side of the floor.

4 They gather and coordinate all the

5 information that is needed, and I think

6 they just call to say, "We'll need these

7 funds," and they send the loan disbursement

8 statement, called LDS, to whoever is at

9 treasury, and they produce the funds

10 through the wiring source, wire the funds

11 to the escrow agent, and then our outside

12 counsel makes sure that we have everything

13 we need to close the loan.

14 Q. Does the securing of the cash, the wire

15 transfer of the funds, require a review of

16 the loan approval?

17 A. Yes. The closer reviews that --

18 Q. And --

19 A. -- as the information comes in.

20 Q. And the credit review that Patricia Coyne

21 prepared in this case?

22 A. They may look at that.

23 Q. Okay.

24 A. Ordinarily just looked at the approval.

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1 Q. Ordinarily, the closer would just take
 2 Malik 1?
 3 A. Right.
 4 Q. The approval?
 5 A. Right.
 6 Q. The commitment letter -- the commitment --
 7 the loan approval document?
 8 A. Yes.
 9 Q. Malik 1?
 10 A. Yes.
 11 Q. And take that, and then call upon the --
 12 so long as all the criteria set forth in
 13 Malik 1 had been satisfied, --
 14 A. Right.
 15 Q. -- send me the money?
 16 A. Right.
 17 Q. Prior to today, is it accurate to say that
 18 you have been in Mr. Koller's company on
 19 one occasion?
 20 A. I believe that's the case.
 21 Q. And the same with respect to Joe Kelly?
 22 A. Yes. I think so.
 23 Q. And that was the same occasion? That was
 24 a lunch?

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1 A. Yes.
 2 Q. A luncheon you had?
 3 A. Yes.
 4 Q. And Mr. Ferrie was in attendance as well?
 5 A. Yes.
 6 Q. Was there anyone else there besides the
 7 four of you?
 8 A. No.
 9 Q. Do you have any recollection of what
 10 occurred at that luncheon?
 11 A. I believe -- and I knew ahead of time --
 12 that they wanted to discuss doing away
 13 with the commitments and being relieved of
 14 the obligations under it.
 15 Q. And what was discussed? What was the gist
 16 of what you recall being discussed?
 17 A. Well, I think I just told you what was
 18 discussed.
 19 Q. That was it? You knew in advance that was
 20 going to be discussed, and in fact it was
 21 discussed?
 22 A. Yes.
 23 Q. And do you recall anything else about that
 24 discussion?

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1 A. I recall that Jim talked about the
 2 previous deals that they had sold, and
 3 they had plenty of cash, and that they
 4 were happy with their development, that it
 5 was doing well, that it was leasing okay,
 6 that he would like to have us withdraw the
 7 commitment for the cost of the deposits,
 8 and that I replied it wasn't my decision,
 9 and I would let him know if that's
 10 possible or not.
 11 MR. SCHER: Let's mark this as
 12 the next exhibit.
 13 (Two-page e-mail string, most
 14 recent e-mail dated May 31,
 15 2005, to Mr. Roseen from
 16 Mr. Malik, production numbers
 17 JH 01211 through 01212 marked
 18 Exhibit No. 9 for
 19 identification.)
 20 BY MR. SCHER:
 21 Q. This is Malik Exhibit No. 9.
 22 A. Yes.
 23 (Handing Exhibit No. 9 to the
 24 witness.)

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1 Q. Why don't you take a moment, if you would.
 2 It is -- first let me identify it. It
 3 appears to have been printed from Timothy
 4 Roseen's printer?
 5 A. Um-hmm.
 6 Q. You can say yes, so it makes you seem much
 7 more intelligent.
 8 A. Well, you are assuming a lot.
 9 (Laughter.)
 10 Q. Bates stamped JH 01210 and 1212. So now
 11 take a moment and review it. Take as much
 12 time as you need and review it, and let me
 13 know when you have completed your review.
 14 (Pause.)
 15 (The witness viewing Exhibit
 16 No. 9.)
 17 Q. Have you had an opportunity to review that
 18 document?
 19 A. Briefly, yes.
 20 Q. And is it accurate to say that Timothy
 21 Roseen is the person to whom you report
 22 since Mr. Henderson left?
 23 A. That's probably the case.
 24 Q. Okay. You say "probably." Are you being

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1 facetious?
 2 A. I'm not sure.
 3 Q. And Barry Nectow is the same person to
 4 whom you made reference earlier with
 5 respect to the subject of Regatta and
 6 Avenel?
 7 A. Yes.
 8 Q. And is the description from Mr. Ferrie in
 9 the lunch accurate in all respects to the
 10 best of your knowledge?
 11 MR. DAVIS: Take a moment and
 12 read it, please.
 13 (Pause.)
 14 (The witness viewing Exhibit
 15 No. 9.)
 16 MR. DAVIS: Howard, I want to
 17 note for the record that I think the lunch
 18 meeting that is referred to in
 19 Mr. Ferrie's May 31 e-mail is a different
 20 lunch meeting --
 21 MR. SCHER: Okay.
 22 MR. DAVIS: -- than the one that
 23 Mr. Malik just referred to.
 24 MR. SCHER: Okay. Sorry.

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1 THE WITNESS: Okay. So I guess
 2 I don't -- that's my response.
 3 BY MR. SCHER:
 4 Q. So can you tell me whether that lunch
 5 occurred before or after May 31?
 6 A. I really don't know the date actually.
 7 Q. You testified that -- so you testified
 8 that at the lunch that you remember you
 9 replied that the decision with respect to
 10 the unwinding or withdrawal of the
 11 commitment for the costs of the deposits
 12 was not yours, and you didn't know whether
 13 it was possible or not. What, if
 14 anything, did you do following that event
 15 to determine whether or not it was
 16 possible?
 17 A. I mentioned what happened -- transpired to
 18 Dave Henderson and what the situation was.
 19 Q. Anything else?
 20 A. And that's about it.
 21 Q. Did you hear anything back from Dave
 22 Henderson or anyone else?
 23 A. At some point I did, yes.
 24 Q. Do you recall --

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1 MR. DAVIS: I caution you that
 2 in responding you shouldn't disclose any
 3 attorney-client communications that took
 4 place within Hancock.
 5 THE WITNESS: I don't know what
 6 you are referring to.
 7 MR. DAVIS: It --
 8 MR. SCHER: You are safe.
 9 MR. DAVIS: Let me talk to my
 10 client just for a moment about that,
 11 please.
 12 MR. SCHER: Sure.
 13 MR. DAVIS: Come on out here.
 14 THE WITNESS: Okay.
 15 (The witness and Mr. Davis
 16 exiting the deposition room at 1:43 p.m.
 17 and reentering the deposition room at
 18 1:44 p.m.)
 19 BY MR. SCHER:
 20 Q. Did you hear anything back from Dave
 21 Henderson or anyone else regarding the
 22 unwinding of the commitment?
 23 A. Yes. At some point, I did.
 24 Q. And can you tell me first from whom you

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1 heard back?
 2 A. I believe I heard from Dave.
 3 Q. And anyone else?
 4 A. Not that I recall.
 5 Q. What did you hear from Dave?
 6 A. That management was -- did not want to
 7 accept only the deposits.
 8 Q. Was any other information provided, such
 9 as the identification of who in management
 10 did not want to accept just the deposits?
 11 A. No. That was not provided.
 12 Q. So Dave Henderson just told you management
 13 did not want to accept just the deposits;
 14 is that right?
 15 A. Yes.
 16 Q. Where is Dave Henderson today?
 17 A. I believe he is working for GE.
 18 Q. Where?
 19 A. In Boston.
 20 Q. On his boat or -- no?
 21 A. No. It won't fit in his office, I'm
 22 afraid.
 23 Q. Okay. Oh.
 24 MR. DAVIS: I thought that was a

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1 good come-back actually.
 2 MR. SCHER: I did, too.
 3 (Laughter.)
 4 BY MR. SCHER:
 5 Q. In the exhibit you have before you, Malik
 6 Exhibit 9, --
 7 A. Yes.
 8 Q. -- there is a reference at the bottom
 9 which says, "My assessment"?
 10 A. Yes.
 11 Q. And it is obviously Mr. Ferrie's
 12 assessment to you --
 13 A. Yes.
 14 Q. -- of Mr. Koller?
 15 A. Yes.
 16 Q. Do you have any information inconsistent
 17 with what Mr. Ferrie reports to you
 18 regarding Mr. Koller's character and the
 19 character of Mr. Kelly?
 20 MR. DAVIS: Objection.
 21 A. Do I have any other additional
 22 information?
 23 Q. Yes.
 24 A. About?

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1 Q. Do you?
 2 A. About?
 3 Q. Their honesty, trustworthiness, of
 4 Messrs. Kelly, Koller, or Palopoli.
 5 MR. DAVIS: Same objection.
 6 A. I have nothing more to add or to detract
 7 from what he says.
 8 Q. Okay. I know you don't know who in
 9 management made the decision that
 10 Mr. Henderson reported to you, but do you
 11 know what individuals had the authority to
 12 make such a decision at the time?
 13 A. I'm not quite sure who had the authority
 14 to make the decision at the time.
 15 Q. Well, who do you think did?
 16 MR. DAVIS: Objection.
 17 A. I don't want to speculate.
 18 Q. Really? Would it be speculation to
 19 identify the people? Would it be
 20 speculation to say that Mr. Nectow was
 21 involved or that Mr. Roseen was involved
 22 or Mr. --
 23 A. Anybody could have been involved --
 24 Q. Okay.

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1 A. -- above me who was in management.
 2 Q. And you have no idea who it was?
 3 A. No, I don't.
 4 Q. That's your testimony?
 5 A. It is.
 6 MR. SCHER: Let me do this.
 7 Mark this.
 8 (One-page e-mail dated June 9,
 9 2005, to Mr. Malik from
 10 Mr. Ferrie, production number
 11 JH 01196 marked Exhibit No. 10
 12 for identification.)
 13 BY MR. SCHER:
 14 Q. I show you what I have marked as Malik
 15 Exhibit 10.
 16 (Handing Exhibit No. 10 to the
 17 witness.)
 18 Q. This is a document Bates stamped JH 01196,
 19 and it is from Mr. Ferrie to you dated
 20 June 9, 2005, at 10:06 a.m., showing
 21 carbon copies to Jessica Yaffie Leveroni
 22 and Tom Rogers. Do you see that?
 23 A. Yes, I do.
 24 Q. Can you tell me who Jessica Yaffie

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1 Leveroni is?
 2 A. Jessica is a John Hancock in-house lawyer.
 3 Was. Is no longer with us.
 4 Q. Where is she now?
 5 A. I'm not sure.
 6 Q. When did she leave?
 7 A. Six months ago, eight months ago.
 8 Q. What were the circumstances of her
 9 leaving?
 10 A. New baby.
 11 Q. So -- okay. And Tom Rogers is outside
 12 counsel for John Hancock on this
 13 transaction?
 14 A. Correct.
 15 Q. Did you have any conversations with
 16 Mr. Koller or representatives of the
 17 borrower subsequent to your lunch outside
 18 their physical presence?
 19 A. You know, not that I recall.
 20 Q. Okay. And take a moment and review this
 21 e-mail, if you would.
 22 (Pause.)
 23 (The witness viewing Exhibit
 24 No. 10.)

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1 A. Okay. I have done it.
 2 Q. Did you do so?
 3 A. Yes.
 4 Q. Can you tell me what, if any, reaction you
 5 had to it?
 6 A. Neutral.
 7 Q. Did you learn that -- do you have an
 8 understanding as to why the -- well, who
 9 made the decision to seek yield
 10 maintenance penalty and hedge costs as
 11 well as payment of third-party costs that
 12 is reflected in this June 9 e-mail?
 13 A. I think John represented that to the
 14 borrower.
 15 Q. Do you know who made the decision to seek
 16 those?
 17 A. I'm not sure he is seeking it. He is
 18 stating what we have the right to -- what
 19 he believes we have the right to --
 20 Q. Okay.
 21 A. -- without review of counsel or me. I'm
 22 speculating here.
 23 MR. DAVIS: Don't speculate.
 24 THE WITNESS: All right. I

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1 won't.
 2 Q. Are you aware of John Hancock's hedge
 3 costs as of August 2005?
 4 A. I know there were hedge costs. I'm not
 5 quite sure what they are off the top of my
 6 head.
 7 Q. This -- the hedge costs in August of 2004
 8 were \$355,000 on one date, and this e-mail
 9 suggests that the hedge costs were
 10 \$86,000. Can you explain to me how both
 11 can be accurate?
 12 MR. DAVIS: Objection.
 13 A. How they can be accurate?
 14 Q. Yes. Are they both accurate as far as you
 15 know?
 16 A. I don't -- as far as I know, they are
 17 accurate. I don't know how accurate they
 18 are.
 19 Since a hedge is based on
 20 relative interest rates, the relative
 21 interest rates -- the derivative you buy
 22 and market shifts, then the hedge costs
 23 will shift up and down, so over time, they
 24 could change.

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1 Q. So it is conceivable that the hedge cost
 2 could be zero?
 3 A. Yes.
 4 Q. And do you know how the yield maintenance
 5 penalty is calculated?
 6 A. Yes.
 7 Q. How?
 8 A. It is the present value of the debt
 9 service -- it is the present value of the
 10 difference between a certain treasury and
 11 the interest rate over the life of the
 12 loan.
 13 Q. Do you know what the actual difference is
 14 between the interest rate over the life of
 15 the loan present value and the amounts
 16 earned by John Hancock for any period of
 17 time?
 18 MR. DAVIS: Objection.
 19 A. I don't think you could have said that one
 20 in a more vague fashion.
 21 Q. Okay. I can try.
 22 (Laughter.)
 23 Q. If we take the period -- take a period of
 24 time, and looking backward, do you know

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1 the earning of -- first of all, do you
 2 know whether any portion of the
 3 \$32 million was actually earmarked?
 4 MR. DAVIS: Objection.
 5 A. I'm not quite sure what the cash
 6 management policies are of John Hancock.
 7 Q. Okay. Who would know?
 8 A. What individual?
 9 Q. What group, organization, anything you can
 10 tell me.
 11 A. Possibly treasury. I'm not sure.
 12 Q. Okay. Does the allocation reflected in
 13 the loan commitment have anything to do
 14 with the realization by John Hancock of
 15 the -- or the earmarking by John Hancock?
 16 MR. DAVIS: Objection.
 17 A. Buyer marking, do you mean setting the
 18 funds aside or --
 19 Q. Yes.
 20 A. -- posting a date in the future when you
 21 need to have some funds set aside? Either
 22 of those? Right; right?
 23 Q. Yes.
 24 A. I'm sure it does. Yes.

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1 Q. So the -- I didn't get the identification
2 of these entities, but GBRE, what does
3 that represent? Do you know?
4 A. I believe that is the line of business
5 that issues GICs, guaranteed income
6 contracts.
7 Q. And so what literally does the allocation
8 of \$3.9 million to GBRE on the date of
9 approval, August 17, 2004, mean?
10 A. It means that we will take that much money
11 from them and return a certain return to
12 them based on that percentage of the loan.
13 Q. When the loan is closed?
14 A. Yes.
15 Q. So it means nothing with respect to --
16 there is no change with respect to -- no
17 change, no internal financial change is
18 made at the time of the commitment?
19 MR. DAVIS: Objection.
20 A. I'm not quite sure.
21 Q. Who would know?
22 A. I'm not quite sure.
23 Q. Since the loan was never closed, this
24 allocation in the commitment is academic,

1 of that hedge was for its duration; am I
2 right?
3 A. Yes.
4 Q. Do you know what the cost was or an
5 estimate of what that cost was other than
6 what is contained in the e-mail that I
7 just showed you, \$86,000?
8 A. I believe there was a cost. I don't know
9 what it is off the top of my head.
10 Q. Was it four figures, five figures, six
11 figures? Do you remember?
12 A. I'm not sure. I think it was six, but.
13 Q. Okay. And where did you see this
14 calculation?
15 A. I don't know if I saw the calculation or
16 it was told to me.
17 Q. Who told it to you?
18 A. I don't recall.
19 Q. When did they tell it to you, whoever it
20 was that told it to you?
21 A. I recall that even less.
22 Q. That is even less?
23 A. Yes.
24 Q. Okay. Is there a process by which the

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1 meaning it has no consequence; am I right
2 about that?
3 MR. DAVIS: Objection.
4 A. I believe there are hedge costs that will
5 have to be paid when we sell off the
6 derivatives. Right.
7 Q. Okay. So when you sold off the
8 derivatives -- have you sold off the
9 derivatives?
10 A. I believe they unwound that position.
11 Q. They?
12 A. Unwound that position, yes.
13 Q. And did they unwind that position -- who
14 is "they" that unwound that position?
15 A. The people who placed the hedge initially,
16 the department in the bond department.
17 Q. Okay. And that -- the bond department
18 which placed the hedge originally and
19 notified you of the interest circle lock
20 are the same people who unwound that hedge
21 position when it became known that the
22 loan would not close; am I right?
23 A. I believe that's the case.
24 Q. And those people would know what the cost

1 hedge cost is calculated on the occasion
2 of the nonfunding of a loan?
3 A. It would be the same calculation as it
4 would when you are speculating as to what
5 it costs any time. Yes.
6 Q. Did you receive formal notification that
7 the hedge had been eliminated for this
8 loan?
9 A. No. I just asked them to unwind it
10 because it wasn't going to close, and then
11 they unwound it.
12 Q. When did you ask them to unwind it?
13 A. Shortly after we received their letter, I
14 believe.
15 Q. In June of '05?
16 A. Whenever that happened to be.
17 Q. And did you ask them to unwind the hedge
18 in a writing?
19 A. No.
20 Q. How did you do it?
21 A. Just told portfolio management that we --
22 the loan was dead, unwind the position,
23 and that's the last I heard of it.
24 Q. When you called portfolio, did you have a

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1 name that you called?

2 A. At that time I believe either Barry Nectow

3 or Diane Crisileo, and Diane is no longer

4 there. One of those two.

5 Q. And is it fair to say that that unwinding

6 occurred at or about the time of the

7 e-mail from John Ferrie to you, Malik

8 Exhibit 10?

9 MR. DAVIS: Objection.

10 A. I don't know. I think I already testified

11 I didn't know.

12 Q. Was it -- do you know in relationship to

13 that e-mail whether it was before or after

14 you met with Mr. Koller?

15 A. I'm not sure. It would have to be after I

16 met with Mr. Koller.

17 Q. After?

18 A. Yes.

19 Q. Was it shortly after you met with

20 Mr. Koller?

21 A. If I'm not mistaken, I think I said

22 shortly after I received their letter

23 formally cancelling the commitment.

24 Q. Okay. Just to go back to a question I was

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1 asking you earlier, is it accurate to say

2 that other than the hedge that you

3 identified that you testified occurred in

4 early August 2004 and the costs attendant

5 with that hedge, there was no change made

6 to and in anticipation of the funding of

7 the \$32 million loan to Avenel?

8 MR. DAVIS: Objection. Asked

9 and answered, I believe.

10 A. Could you say that a little faster?

11 Q. Yes. There is no change, no internal

12 financial change, made at the time of the

13 commitment except that there is a hedge

14 acquired at the time of the rate lock?

15 MR. DAVIS: Objection. Asked

16 and answered.

17 A. No other internal change to what?

18 Q. Financial. No internal financial change.

19 MR. DAVIS: Objection.

20 A. I still don't understand. A corporation

21 the size of Hancock is changing all the

22 time. I don't know what you are referring

23 to.

24 Q. Okay.

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1 MR. DAVIS: I object, Howard. I

2 think he testified earlier that he didn't

3 know whether that was the case or not.

4 MR. SCHER: He said he wasn't

5 quite sure, and I am just trying to

6 understand if he knows anything about

7 that.

8 MR. DAVIS: All right.

9 BY MR. SCHER:

10 Q. Other than the hedge costs that were paid

11 when the derivatives were paid off at the

12 time that the borrower, prospective

13 borrower, indicated to you that it was not

14 going to close the loan, are there any

15 other costs of which you are aware?

16 MR. DAVIS: Objection.

17 A. I believe the only other costs would be

18 legal costs. We started no other reports

19 before they asked to blow up the

20 commitment.

21 Q. Thank you.

22 MR. DAVIS: I am going to ask

23 for two seconds.

24 MR. SCHER: Sure.

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1 (Recess taken at 2:09 p.m.)

2 (Recess ended at 2:15 p.m.)

3 BY MR. SCHER:

4 Q. To the best of your knowledge -- by the

5 way, that comment about speaking slowly,

6 it is impossible to follow people who talk

7 slowly, and I agree with you, and I

8 empathize with you, and I resonate.

9 Was there ever a time that the

10 borrower was qualified for the loan, had

11 met the qualifications to have the loan

12 made?

13 A. Yes.

14 Q. When was that?

15 A. At the commitment.

16 Q. Okay. From the time of the commitment to

17 August of 2005, are you aware of any time

18 when the borrower was qualified to have

19 the loan funded --

20 MR. DAVIS: Objection.

21 Q. -- in the amount of \$32 million?

22 MR. DAVIS: Objection.

23 You can respond.

24 A. The loan commitment was designed so that

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1 by the time of August 1st it would be
 2 funded.
 3 Q. Right. So on August 1st, 2005, do you
 4 have any information which would support
 5 or refute the statement that the fund
 6 would -- the \$32 million loan would be
 7 funded?
 8 A. At the time I met with Jim and his
 9 partner, I thought that they were making
 10 good progress with the leasing and it was
 11 likely to be funded within the guidelines.
 12 Q. Okay. Did there ever come a time when you
 13 were disabused of that?
 14 A. Oh, I can't say that I was.
 15 Q. Okay. Did you ever undertake to determine
 16 whether or not the rental rate was
 17 sufficient to cause the loan to be funded
 18 as of today?
 19 A. When they wanted to blow up the loan, it
 20 was no longer a concern of mine.
 21 Q. Okay. So from the time that you learned
 22 that they wanted to not close the loan,
 23 you were no longer concerned as to whether
 24 or not they qualified for -- to have the

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1 the funding of the loan; am I right?
 2 A. Yes.
 3 Q. Okay. Okay. I say funding, but closing
 4 the loan?
 5 A. Right.
 6 Q. And you know I was just -- I mentioned the
 7 rental rate. I was talking about
 8 occupancy. You knew that; right?
 9 A. Yes.
 10 Q. That I meant occupancy? You knew that?
 11 Yes?
 12 A. Yes.
 13 Q. And do you recall on the occasion when you
 14 met with Messrs. Koller and Kelly that you
 15 made the comment that you learned that
 16 there was a prospect or a possibility on
 17 the part of the owners, the borrowers, to
 18 sell the development?
 19 A. Yes.
 20 Q. And what did you learn about that? What
 21 do you recall learning about that?
 22 A. That they wanted to sell the --
 23 Q. Okay. Did you learn anything else?
 24 Price? Value?

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1 loan funded?
 2 A. Not as -- no. Of course not.
 3 Q. Then what did you mean? What did you mean
 4 by that time?
 5 A. No -- I am agreeing with you. Yes.
 6 Q. Okay. So other than your knowledge that
 7 they were well on their way to being
 8 qualified to have the loan funded as of
 9 the time you met with them, you don't have
 10 any information as to whether or not they
 11 were qualified to have the loan closed; is
 12 that right?
 13 A. I --
 14 MR. DAVIS: Objection.
 15 You can respond.
 16 A. I understand that John conveyed to me some
 17 times after the point that they started
 18 negotiating the blowup of the loan that
 19 they weren't leasing at a high enough
 20 rate.
 21 Q. Okay. And that -- and you do know that?
 22 A. Yes.
 23 Q. And, of course, the rental rate
 24 achievement was one of the criteria for

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1 A. That they were approached by another
 2 broker who thought he could sell it for
 3 much more than they thought they could
 4 sell it for, even before it was leased up,
 5 and they were happy about that, and that's
 6 what they wanted to do.
 7 Q. And do you remember your comment?
 8 A. No.
 9 Q. Do you recall saying, "It's nice to have
 10 options"?
 11 A. No. I don't recall that.
 12 Q. Did you report that to anyone at John
 13 Hancock?
 14 A. I told Dave Henderson about the meeting
 15 afterwards.
 16 Q. Did you tell him specifically that the
 17 borrowers had a new plan and that plan
 18 involved selling the property before it
 19 became fully occupied?
 20 A. I told him that's what they wanted to do.
 21 Q. And did you tell him what the prospects
 22 were -- the prospects they had been told
 23 existed with respect to a resale price or
 24 sale price?

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1 A. I think there was a vague price, but I
 2 don't recall what it was.
 3 Q. Was it --
 4 A. It was much more than they thought they
 5 were going to be able to get for it fully
 6 occupied.
 7 Q. It was a very attractive price?
 8 A. Yes, it was. I believe so.
 9 Q. Okay.
 10 A. They were pretty happy.
 11 Q. Right. Is it accurate to say that John
 12 Hancock wanted to participate in that
 13 upside to a certain -- to some extent?
 14 MR. DAVIS: Objection.
 15 A. I believe we wanted to have our commitment
 16 honored.
 17 Q. You wanted to have your commitment
 18 honored?
 19 A. Correct.
 20 Q. Nothing more; is that right?
 21 A. I believe that's the case.
 22 Q. Okay. And you have no explanation as to
 23 why John Hancock wanted to have their
 24 commitment honored with respect to Avenel

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1 THE WITNESS: Yes.
 2 MR. DAVIS: But I haven't raised
 3 relevance objections, because I think that
 4 those are reserved.
 5 MR. SCHER: Absolutely.
 6 THE WITNESS: And it is also not
 7 my decision as to one was not and the
 8 other one was, as I already explained.
 9 Therefore, I would be speculating a whole
 10 bunch as to why different parties had
 11 different decisions.
 12 BY MR. SCHER:
 13 Q. You said you didn't think you needed to --
 14 needed to explain the difference. I am
 15 asking you why don't you think you need to
 16 explain the difference.
 17 A. Because I have already explained it.
 18 MR. DAVIS: Objection.
 19 Q. Because you have already explained it?
 20 A. Correct.
 21 Q. So whatever you said in this deposition is
 22 the explanation; am I right?
 23 MR. DAVIS: Objection. I think
 24 you are arguing with him now.

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1 differently than they wanted to have it
 2 honored with respect to Regatta?
 3 MR. DAVIS: Objection.
 4 A. I don't think I need to explain that.
 5 Q. Again? Because you have explained it once
 6 already?
 7 A. Well, I don't think Regatta -- I don't
 8 think I need to explain the difference.
 9 Q. And why is that? Why don't you think you
 10 need to explain it? I ask you to explain
 11 it.
 12 MR. DAVIS: I object, in part
 13 because I think -- I still don't
 14 understand the relevance here of what
 15 Hancock did with respect to another
 16 contract.
 17 MR. SCHER: All right.
 18 MR. DAVIS: Hancock certainly
 19 has the right to enforce contracts as it
 20 sees fit, as permitted by the law.
 21 MR. SCHER: Right.
 22 MR. DAVIS: So I don't
 23 understand the relevancy, in any respect,
 24 of the Regatta deal.

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1 A. The explanation is it wasn't my decision
 2 in either case.
 3 Q. Okay.
 4 A. And it was made by different parties. So
 5 I -- for me to explain what different
 6 parties' thinkings are --
 7 Q. Not for you? You can't do that?
 8 A. I don't see how I can.
 9 Q. Okay.
 10 A. Poorly worded, I know.
 11 Q. Yours was perfect; mine was poorly worded.
 12 MR. SCHER: Okay. If we could
 13 mark that.
 14 (One-page Preliminary Loan
 15 Information Worksheet for
 16 Multifamily Properties,
 17 production number JH 00102
 18 marked Exhibit No. 11 for
 19 identification.)
 20 BY MR. SCHER:
 21 Q. I will show you what has been marked as
 22 Malik Exhibit 11.
 23 (Handing Exhibit No. 11 to the
 24 witness.)

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1 Q. This is a document that is Bates stamped
 2 JH 00102.
 3 (Pause.)
 4 (The witness viewing Exhibit
 5 No. 11.)
 6 Q. This is a John Hancock Real Estate
 7 Investment Group form; is that right?
 8 A. Yes.
 9 Q. And it is entitled "Preliminary Loan
 10 Information Worksheet for Multifamily
 11 Properties"; is that right?
 12 A. Yes.
 13 Q. And was this -- this was prepared by John
 14 Ferrie and Brian Depolis?
 15 A. Depolis, yes.
 16 Q. The correspondent firm is JHREF. Do you
 17 know what that is?
 18 A. John Hancock Real Estate Finance. That's
 19 the sub that they worked for.
 20 Q. That is who they worked for then; is that
 21 right?
 22 A. Yes.
 23 Q. And the contact was Rob Kelly, the brother
 24 of one of the principals; right?

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1 A. Yes.
 2 Q. And this -- and you are identified as the
 3 Boston underwriter?
 4 A. Yes.
 5 Q. Is that an accurate description of your
 6 role in this case?
 7 A. Yes.
 8 Q. And the -- can you tell me where you got
 9 this? Did you ever -- did you get this at
 10 or about the time --
 11 A. The date in the upper right-hand corner
 12 there, 12-05-05, 1:33 p.m.
 13 Q. That is when it was printed or updated?
 14 A. Yes.
 15 Q. Do you recall when you -- what -- where
 16 this form comes in the process?
 17 A. This is a -- it is linked to a larger
 18 worksheet that has the rent roll and the
 19 roll schedule so you can get a sense of
 20 the turnover schedule, and not -- not --
 21 excuse me. That's for apartment -- office
 22 buildings. This one will have a rent roll
 23 and operating income on another worksheet
 24 attached to it that works into this

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1 worksheet. It is a way of quickly trying
 2 to understand what the loan parameters
 3 are.
 4 Do you need an explanation of
 5 how it works?
 6 Q. First of all, I just wanted to observe to
 7 you that that very tiny print down at the
 8 bottom has Avenel June 11, '04 xls.
 9 A. Yes.
 10 Q. Is that the date on or about it was
 11 prepared?
 12 A. I'm not sure.
 13 Q. Okay. Yes. Would you tell me --
 14 A. It says on the right-hand side "last
 15 updated" on the bottom.
 16 Q. January 8, '04?
 17 A. Yes.
 18 Q. Now that -- I am assuming that that is
 19 when the form was last updated?
 20 A. Right.
 21 Q. And that its application to the Avenel
 22 situation occurred on June 11, '04?
 23 A. You know, that is interesting. Because it
 24 doesn't fit to the date it was printed,

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1 updated. The one on the top I think is
 2 the accurate one. I'm not sure where --
 3 why it has two different dates on the
 4 bottom.
 5 Q. Okay.
 6 MR. DAVIS: I suspect the date
 7 at the top, the 12-05-05 date, is when it
 8 was printed for discovery purposes.
 9 MR. SCHER: Yes. That would be
 10 my assumption as well.
 11 THE WITNESS: Oh, okay. That
 12 makes sense.
 13 BY MR. SCHER:
 14 Q. It is an Excel form; is that right?
 15 A. Yes.
 16 Q. And was this form used in connection with
 17 the Avenel project on more than this first
 18 occasion?
 19 A. Probably. It is updated and played with
 20 regularly, just as -- as you stress test
 21 the property with different ideas as to
 22 what, you know, the reserves would be,
 23 what the -- you don't see it, because it
 24 is behind this sheet. There are two other

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1 pages that go with it, what the reserves
2 are, what the vacancy factor is, what the
3 expenses are, what the rents are, what the
4 occupancy is -- the same thing as vacancy.
5 Yes. And then what comes out is as the
6 interest -- as the treasury changes or as
7 interest rate changes, you see the
8 coverage down below. It says debt service
9 coverage calculation. You will see
10 changes to the loan to value.
11 Q. Here we go.
12 A. Right. It is a way to quickly -- it is a
13 form you use for all apartment loans for
14 all correspondents at all offices, so that
15 when you compare different projects, they
16 all come up with the same type of
17 calculation.
18 Q. Okay.
19 A. It is the way of making the underwriting
20 across the whole portfolio consistent.
21 (Two-page e-mail string, most
22 recent e-mail dated June 17,
23 2004, to Mr. Malik from
24 Mr. Ferrie and attachment,

1 and JH 104?
2 A. Right. Those are the two sheets behind I
3 mentioned.
4 Q. And JH 105?
5 A. Okay.
6 Q. And that -- then that -- is that accurate
7 to say that that was the initial
8 submission by the field, John Hancock's
9 field operators, to initiate this loan
10 possibility?
11 A. You know, I don't recall Scott McIsaac
12 being involved in this, but apparently he
13 was. I'm not quite sure if this is
14 another broker who heard of the
15 transaction and sent it to us through --
16 through Scott and got that John was
17 already working on it. I don't -- you
18 know, I really am not sure.
19 Q. Okay.
20 A. But somehow it got to John and possibly
21 went through Scott McIsaac. For some
22 reason, I thought it came in another
23 fashion to John.
24 Q. Now on that first page, JH -- I am sorry

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1 production numbers JH 00100
2 through 00105 marked Exhibit
3 No. 12 for identification.)
4 BY MR. SCHER:
5 Q. Now I will show you what I have had marked
6 Malik Exhibit 12.
7 (Handing Exhibit No. 12 to the
8 witness.)
9 Q. And this document appears to be an e-mail
10 which originated with a Kevin Collins
11 dated June 4, 2004, and then forwarded
12 from John Ferrie to you on June 17, 2004?
13 A. Yes.
14 Q. And it indicates that attached are two
15 Excel sheets: One is Avenel, June 11,
16 xls, and the other one is Avenel rating,
17 June 17, xls?
18 A. Right.
19 Q. And then you can see the Bates stamp
20 numbers --
21 A. Yes.
22 Q. -- sequentially?
23 A. Yes.
24 Q. So these are JH 102. Now you see JH 103

1 -- JH 102, it indicates that the
2 refinancing constant is 9.66 percent?
3 A. Yes.
4 Q. Is that the constant?
5 A. That was the constant that John Hancock
6 used for many years based on what the
7 securitization world was looking for.
8 Q. Is that the same 10 percent constant
9 that --
10 A. But Manulife has a 10 percent constant.
11 Q. Okay. Page JH 104, which is a June 11th
12 date prepared, operating history and pro
13 forma, it shows a vacancy allowance of
14 five percent. Do you see that?
15 A. Yes.
16 Q. Do you know what the source of that five
17 percent vacancy allowance was?
18 A. Whose idea that was?
19 Q. Yes.
20 A. I imagine Scott's, but I'm not sure.
21 Q. Okay. And then there is a, further down,
22 there is a management fee of four percent?
23 A. Yes.
24 Q. Do you see that?

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1 A. Yes.
 2 Q. Do you know where that came from?
 3 A. That's typically what we use for a
 4 management fee. Again that is from the
 5 securitization world. I don't think it is
 6 realistic, but it is conservative.
 7 Q. So the normal management fee would be
 8 higher than that or --
 9 A. Well --
 10 Q. I just want to know what conservative
 11 means in this context.
 12 A. Conservative means that ordinarily a
 13 management fee would be lower than that.
 14 Q. Lower than that?
 15 A. Yes. In my estimate.
 16 Q. Okay. And then it has the total operating
 17 expenses per unit of \$5,889?
 18 A. Yes.
 19 Q. And that represents -- that is a number
 20 that John Hancock uses in connection with
 21 its evaluation of a loan?
 22 A. That is the total operating expenses
 23 divided by the number of units, but the
 24 number we use in our underwriting in

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1 general changes depending on our judgment
 2 and the circumstances. Some apartments in
 3 some markets have higher taxes or lower
 4 taxes, or utilities are done a different
 5 way. They are either done totally by --
 6 paid for by the tenants. Sometimes
 7 they're not. Sometimes tenants pay for
 8 water. Sometimes they don't. Marketing
 9 costs would change over time.
 10 Professional fees is a guess. It's --
 11 it's -- it is a lot of variables in the
 12 expenses. So the dollar per unit changes
 13 from market to market, location to
 14 location, age of the property building,
 15 the kind of property building it is, if it
 16 is two stories or four stories or one
 17 story or high rise. There isn't a fixed
 18 number.
 19 Q. Does it change from day to day on the same
 20 project?
 21 A. It changes as underwriting -- as the
 22 underwriter has a better knowledge of the
 23 situation.
 24 Q. So is it your testimony that for every

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1 change in that number, for example, that
 2 is the unit cost, there is an
 3 underwriting-based reason for that?
 4 A. It is based on the underwriter's judgment.
 5 Q. Underwriting judgment for each change; is
 6 that right?
 7 A. With backup, yes. But most of those
 8 judgments are based on backup.
 9 Q. And are any of them not based on backup?
 10 A. Yes. It can be not based on backup. For
 11 instance, you are guessing at what the
 12 repair and maintenance is going to be for
 13 a new building. Very often we rely on the
 14 developer to give us their estimate. If
 15 it seems reasonable, we take that. Other
 16 times, we don't.
 17 Q. In the absence of developer
 18 information, --
 19 A. Yes.
 20 Q. -- is it your testimony that any change in
 21 that per unit operating expense is based
 22 on backup?
 23 A. Any change? No. It is based on judgment.
 24 Q. And when you say "judgment," do you mean a

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1 reason related to the project itself or
 2 any reason?
 3 A. It's -- it's a reason related to an
 4 underwriter's experience with the product
 5 type.
 6 Q. The product? Not with respect to the
 7 desire by John Hancock to make the deal
 8 happen? Am I right about that?
 9 A. You would be right about that as far as
 10 I'm concerned.
 11 Q. Okay. So every change with respect to
 12 this per unit expense is one that is based
 13 upon a project-connected reason, not a
 14 John-Hancock-wants-to-make-the-deal
 15 reason?
 16 A. Ordinarily that's the case, yes.
 17 Q. In this case, as far as you know, every
 18 one of those changes is connected to the
 19 project itself and not John Hancock wants
 20 to make the deal?
 21 MR. DAVIS: Objection.
 22 You can respond.
 23 A. Well, I wish life was as black and white
 24 as that.

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1 Q. You are laughing?

2 A. I am laughing, because even in a case with

3 a person who has as much experience as me,

4 there is -- an intelligent person

5 recognizes margin for error, plus or

6 minus.

7 Q. Plus or minus what percent?

8 A. Five, ten, fifteen percent. It depends on

9 the situation and the particular line

10 item.

11 Q. Do you recall any instances where changes

12 were made with respect to the dollar unit

13 expenses that were not based on

14 underwriter judgment connected to the

15 project itself?

16 A. Not based on underwriter -- one more time?

17 Q. Do you recall any instances in this case

18 where changes were made with respect to

19 the dollar unit expenses that were not

20 based on underwriter judgment connected to

21 the project's expenses themselves?

22 MR. DAVIS: Objection.

23 A. Okay. Well, I think we talked earlier

24 today about the 10 constant, and I believe

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1 the underwriting was changed based upon

2 the recognition of the probability of plus

3 or minus an error -- an error in judgment

4 or in accuracy of the underwriting.

5 Q. So that -- that --

6 A. That is possible that that's --

7 underwriting may have been adjusted for

8 that reason. Yes.

9 Q. So the underwriting may have been adjusted

10 so that the 10 percent constant criteria

11 could be met rather than that the expenses

12 of the project themselves should be

13 revised because of reality?

14 MR. DAVIS: Objection.

15 A. In that instance, I think it appears that

16 the reserves were adjusted based on the

17 fact that it is a new project and not what

18 -- not a typical project that has been

19 around for five to twenty years, yes. So

20 it was both instances -- both cases, I

21 believe, it was adjusted because it didn't

22 make the ten percent constant and also

23 because the underwriting was overly

24 conservative.

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1 Q. So the changes that were made on the eve

2 of the commitment approval contained

3 within them elements of making the deal

4 happen as well as some reality?

5 A. It was mostly for presentation. Right.

6 Q. Mostly for presentation, though;

7 right?

8 A. Yes.

9 Q. And not because the expenses really or the

10 reserves really should be adjusted?

11 A. It is because the reserves weren't that

12 important. Right.

13 Q. Right?

14 A. Yes.

15 Q. Take a look at JH 00105, the commercial

16 rating sheet, if you would.

17 A. Okay.

18 (Witness complying.)

19 Q. There is a block down there called

20 "Refinance Sizing Constant."

21 A. Yes.

22 Q. And then that's the old John Hancock

23 securities industry standard as contrasted

24 with the 10 percent constant that new

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1 Manulife --

2 A. Right.

3 Q. -- required?

4 A. Right.

5 Q. And the refinance annual DSCR, could you

6 tell me what that is?

7 A. That I believe -- I'm not quite sure what

8 that is. Hold on. Let me think about

9 this for a second.

10 Q. Okay.

11 (Pause.)

12 A. The underwriter cash flow available for

13 debt service, which is 3.5 million, and

14 the debt service of the balloon balance at

15 the end of the loan, which is 27.28 --

16 27.2 million, the debt service with the

17 current interest rate would be 2.7, so the

18 coverage is 3.1 million divided by

19 2.79 million. So, in essence, it is

20 saying if the interest rate was

21 9.66 percent, with the balloon balance at

22 the end of the loan, the refinancing

23 annual debt service coverage ratio would

24 be 1.12 to 1.

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1 Q. Okay.
 2 A. So they are applying the re -- the 9.66
 3 constant to the outstanding balloon
 4 balance and assuming that the underwriting
 5 cash flow doesn't change.
 6 Q. Could you explain that, I mean further
 7 than you have already?
 8 A. Sure. You take the -- when the loan ends,
 9 balloon -- the loan will have a balance of
 10 2.7, roughly 3 million dollars.
 11 Q. I see.
 12 A. Okay? And if the interest rate at the
 13 time -- the constant was applied at the
 14 time of 9.66, given the underwriter cash
 15 flow, the coverage would be 1.12 to 1.1.
 16 In other words, it is above the 9.66
 17 hurdle.
 18 Q. I see.
 19 A. And then if you look above at refinancing
 20 scale, --
 21 Q. Yes.
 22 A. -- it applies -- it puts it in the less
 23 than 1.13, which is worth minus one point
 24 to the rating, so minus one times 4 equals

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1 minus 4, and then all of those numbers in
 2 that right-hand column are added up to get
 3 20.5.
 4 Q. 28.5?
 5 A. 28.5. I am sorry.
 6 Q. And that equals?
 7 A. That equals a rating of BAA2. It is one
 8 of the factors taken into account in
 9 rating the loan.
 10 Q. I see.
 11 MR. SCHER: Mark this.
 12 (One-page fax cover sheet dated
 13 July 14, 2004, to Mr. Maguire
 14 from Mr. Kelly and attachments,
 15 production numbers V 1161
 16 through 1168 marked Exhibit
 17 No. 13 for identification.)
 18 BY MR. SCHER:
 19 Q. I show you what I have had marked Malik
 20 Exhibit No. 13.
 21 (Handing Exhibit No. 13 to the
 22 witness.)
 23 Q. This is a document Bates stamped V 1161.
 24 It is on the letterhead of Koller Kelly,

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1 and the date is July 14, 2004.
 2 (Pause.)
 3 (The witness viewing Exhibit
 4 No. 13.)
 5 Q. Within that document is contained the
 6 second page, V 1162, which is the
 7 Montgomery Square Apartments operating
 8 budget. Do you see that?
 9 A. Okay.
 10 Q. Is it accurate to say that it was this
 11 budget that was submitted by the
 12 prospective borrower in connection with
 13 the \$32 million loan?
 14 MR. DAVIS: Objection.
 15 A. I'm not sure. Who is Owen Maguire?
 16 MR. DAVIS: I think, Howard,
 17 Owen Maguire was a gentleman who was
 18 trying to do the GMAC deal.
 19 MR. SCHER: Well --
 20 MR. DAVIS: I don't know if any
 21 of these materials showed up in Hancock's
 22 files, at least based on our review.
 23 MR. SCHER: Okay.
 24 BY MR. SCHER:

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1 Q. Let's take a look at and see if we can
 2 sleuth this. Attached to -- let me make
 3 sure that I am going to make an accurate
 4 representation, but I think I am. Give me
 5 a moment.
 6 (Pause.)
 7 Q. Attached to Malik Exhibit 3 -- and you
 8 don't have to go into it -- is an
 9 Exhibit 1 -- oh, you are doing the same.
 10 You are doing exactly what I was going to
 11 ask you to do.
 12 A. Yes, yes.
 13 Q. And if you look at the sheet within Malik
 14 Exhibit 3 Bates stamped 00373, --
 15 A. Yes.
 16 Q. -- you will see what is marked Exhibit 1.
 17 A. Yes.
 18 Q. And if you review that, Exhibit 1, which
 19 is Avenel Exhibit 1, revised July 13,
 20 2004, you will see that that example 3
 21 contains several of the same numbers that
 22 appear on V 1162; right?
 23 A. Yes.
 24 Q. So based on your review, are you able to

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1 say the source of example 3 on Exhibit 1
 2 attached to Malik Exhibit 3?
 3 A. Much of it. Yes.
 4 Q. Okay. And what is that source?
 5 A. The --
 6 Q. The submission by the borrower; right?
 7 MR. DAVIS: Objection. I am
 8 sorry. I am lost here.
 9 MR. SCHER: Okay.
 10 MR. DAVIS: And I apologize, but
 11 I don't see the same numbers. I see base
 12 rent and different numbers.
 13 THE WITNESS: These numbers here
 14 (pointing).
 15 MR. DAVIS: Okay.
 16 THE WITNESS: Expense numbers.
 17 MR. DAVIS: I see the expense
 18 numbers. Okay. Some of those match up.
 19 Are you talking about income numbers, too?
 20 Because they do not match up.
 21 MR. SCHER: I agree with you. I
 22 agree. Okay. I am just trying to sleuth
 23 and figure out the source of the numbers
 24 on example 3, Exhibit 1, attached to

1 A. Yes.
 2 Q. The number that results is different than
 3 the number -- the number that results in
 4 example 3 is different than the number on
 5 V 1162 because the multiplier -- the
 6 multiplicand or something is different?
 7 Because the effective gross income is
 8 different?
 9 A. Okay. You are referring to? -- yes, yes,
 10 of course.
 11 Q. Okay.
 12 A. Yes.
 13 Q. Now does -- is there a reserve contained
 14 in this example 3?
 15 A. No.
 16 (Pause.)
 17 A. Well, hold on a second. Is there a
 18 reserve contained in this example? Which
 19 example? Example 3 on the commitment?
 20 Q. Yes, yes. The loan application.
 21 A. You are talking about the \$150 unit
 22 reserve when you are talking?
 23 Q. Yes. Right.
 24 A. No. There isn't.

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1 Malik 3.
 2 BY MR. SCHER:
 3 Q. And you do see some identity in those
 4 numbers?
 5 A. Yes. Most of them came from the borrower.
 6 Q. And Exhibit 1 shows a vacancy rate in
 7 Exhibit 3 of 9 percent?
 8 A. Right.
 9 Q. And that is different than the example
 10 used in the exhibit we were just looking
 11 at, --
 12 A. Yes.
 13 Q. -- the earlier one?
 14 A. Yes.
 15 Q. Can you tell me the source of that vacancy
 16 rate?
 17 A. I -- either that is a negotiated number or
 18 it is the number that fell out of the
 19 existing rents in place and the expenses
 20 that we used.
 21 Q. And then the management fee as you
 22 observed -- well, the management fee shown
 23 on V 1162 is 3.75 percent, and that is the
 24 management fee that is used in example 3?

1 Q. Okay. And applying the 10 percent
 2 constant criteria, would this example 3
 3 result in a \$32 million loan?
 4 A. You wouldn't apply it to the example 3,
 5 because you also have to take off the
 6 reserve that is not included here.
 7 Q. Okay.
 8 A. Again that goes back to the coverage,
 9 which is defined more clearly in I think
 10 it is clause 49.
 11 Q. Now this example 3 includes the
 12 7.25 percent cap?
 13 A. Yes.
 14 Q. And the -- and a 75 percent loan-to-value
 15 ratio?
 16 A. Yes.
 17 Q. Are those two criteria are criteria of
 18 John Hancock at the time?
 19 A. The 75 percent cap is, and -- the
 20 7.25 percent cap is what we deemed to be a
 21 reasonable cap for the market and product
 22 type.
 23 Q. All right.
 24 A. And the 75 percent LTV is a requirement.

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1 Yes.
 2 Q. Okay.
 3 A. Minimum of 75 percent -- a maximum of 75
 4 percent criteria. I'm sorry.
 5 Q. The debt-to-service ratio is not shown on
 6 this example?
 7 A. It is not.
 8 Q. Okay. And the loan --
 9 A. And --
 10 Q. I am sorry?
 11 A. -- it wouldn't be.
 12 Q. Why is that?
 13 A. Because it hasn't been rate locked yet.
 14 Q. I see. And the loan size criteria is not
 15 shown on this?
 16 A. The what?
 17 Q. Loan size criteria.
 18 A. Loan size criteria?
 19 Q. That is a criteria unfamiliar to you?
 20 A. Loan size criteria sounds pretty --
 21 Q. Unfamiliar to you?
 22 A. What are you --
 23 Q. Do you know what the loan size criteria
 24 is?

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1 A. What are you referring to?
 2 MR. DAVIS: Objection. He
 3 obviously --
 4 Q. Capital L, capital S, capital C. Are you
 5 familiar with that criteria, John
 6 Hancock's criteria?
 7 A. There are a lot of criterias, not just
 8 one.
 9 Q. Okay.
 10 A. Debt service, there is the -- I can go
 11 through it for you if you want.
 12 Q. All of them result in determining the loan
 13 size, but I am speaking specifically of a
 14 loan size criteria, something called a
 15 loan size criteria.
 16 MR. DAVIS: Plural? Loan?
 17 MR. SCHER: What?
 18 MR. DAVIS: Loan size criteria,
 19 plural?
 20 MR. SCHER: Yes. It shouldn't
 21 be, but that is the way it is described in
 22 the documents I have seen. I will show
 23 you the document when we get to it. Okay?
 24 BY MR. SCHER:

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1 Q. You are not familiar with it?
 2 A. I will be familiar with it when I see it.
 3 Q. When you see it?
 4 A. Yes.
 5 Q. And if I were to tell you that the per
 6 unit expense for this in example 3 is
 7 \$5,497, you would not disagree with me?
 8 A. If that's what it comes out to.
 9 Q. I show you Malik Exhibit 5. You can find
 10 it there, I think.
 11 A. Okay.
 12 Q. And it has attached to it an Exhibit 1A,
 13 which is on a sheet Bates stamped
 14 JH 00134.
 15 A. Okay.
 16 Q. And that one is dated August 11, 2004,
 17 after the loan commitment -- after the
 18 loan application has been made and before
 19 the commitment has been made; correct?
 20 A. Yes.
 21 Q. It shows a vacancy of 6.05 percent?
 22 A. Yes.
 23 Q. Can you tell me the source of that?
 24 A. It looks like John -- this is attached to

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1 something that John sent somebody.
 2 Q. Right. So John is using the Excel sheet
 3 to accomplish what?
 4 A. Explain something out.
 5 Q. Okay. You don't know?
 6 A. I'm not positive. I don't recall.
 7 Q. And then on this one, it does show the
 8 reserves at \$150 a unit?
 9 A. Yes.
 10 Q. And so it reflects a total of \$38,400;
 11 right?
 12 A. Yes.
 13 Q. Yes?
 14 A. Yes.
 15 Q. And this example 3 on this chart shows
 16 that there is a shortfall in base rent, is
 17 that right, of \$136,839?
 18 A. Let me think about this a second.
 19 Q. Okay. Take your time. I certainly took
 20 some.
 21 (Pause.)
 22 A. You know, it would be better if I had it
 23 on a computer so I could see what the
 24 calculation is, but.

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1 Q. This -- that raises a question I had. You
 2 have a computer on which the various
 3 iterations of Exhibit 1 and 1A were
 4 prepared; is that right?
 5 A. Yes. I believe we already gave you
 6 everything. Right. Yes.
 7 Q. So is it your testimony that you searched
 8 that computer to determine whether there
 9 were any iterations, any variations on
 10 this Excel sheet that perhaps were not
 11 printed but exist nonetheless?
 12 A. I thought I did, but, you know -- yes. I
 13 mean this should be there somewhere, if I
 14 had the e-mail. I don't know if I was
 15 copied on this e-mail.
 16 Q. Did this --
 17 A. I don't think I was.
 18 Q. Okay.
 19 A. Maybe I was. That is not to say I don't
 20 have it.
 21 MR. DAVIS: We did look for
 22 computer records in this case.
 23 MR. SCHER: Okay.
 24 MR. DAVIS: And we did collect

1 A. Okay.
 2 Q. But my question is did he have -- was it
 3 the same data?
 4 A. I imagine it would be.
 5 Q. It's on a network?
 6 A. Yes -- well, it is in our computers.
 7 Right.
 8 Q. It is not --
 9 A. It could be trans --
 10 Q. It can be downloaded?
 11 A. Can be sent back and forth. Right.
 12 Q. But what changes he made, you were able to
 13 see?
 14 A. Yes.
 15 Q. By accessing the same document?
 16 A. Yes.
 17 Q. Okay. Now can you answer my question?
 18 A. But he would have to send it to me to see
 19 it.
 20 Q. Oh, he would?
 21 A. Yes.
 22 Q. So he has on his computer various
 23 iterations, presumably this one in
 24 particular?

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1 some electronic data and print it out. To
 2 the extent we were able to locate computer
 3 records, I believe they have been
 4 produced.
 5 BY MR. SCHER:
 6 Q. Mr. Malik, is it accurate to say that both
 7 Mr. Ferrie and you had the capability of
 8 manipulating, in the neutral sense of the
 9 word, the data reflected on the Excel
 10 sheet, which is Avenel Exhibit 1A?
 11 A. I think that is the purpose of a computer.
 12 Yes.
 13 Q. Both of you could, though?
 14 A. Yes.
 15 Q. My only point was --
 16 A. Yes.
 17 Q. -- that both of you had access to that?
 18 A. Oh, absolutely. Sure.
 19 Q. Is it on a network that he was able to
 20 manipulate the one that you had access to,
 21 or would you literally have to send them
 22 back and forth?
 23 A. I think a better word is change.
 24 Q. I apologize. Alter. Whatever.

1 A. Yes.
 2 Q. Which you might not have unless he had
 3 sent them to you?
 4 A. Right.
 5 Now to answer your question,
 6 after looking at this, it seems that with
 7 a six percent vacancy --
 8 Q. 6.05?
 9 A. 6.05 vacancy, in both instances, they make
 10 the 10 percent constant and the 75 LTV
 11 hurdles, and his iteration at the bottom,
 12 his calculation at the bottom seems to
 13 indicate that the 10 percent constant is
 14 the higher hurdle, and you need a little
 15 bit more rent to meet that hurdle.
 16 So I suspect -- I don't know --
 17 that may have something to do with the
 18 conversation and the reason he sent it to
 19 Mr. Kelly.
 20 Q. But so far as you know, there never was a
 21 change in the Exhibit 1 to the loan
 22 application?
 23 A. I don't believe so, no. It looks like the
 24 complete application that you handed me.

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1 Q. Okay.

2 MR. SCHER: Mark this.

3 (One-page Examples of Reserve

4 Calculations, production

5 number JH 00920 marked Exhibit

6 No. 14 for identification.)

7 BY MR. SCHER:

8 Q. This is JH 920.

9 (Handing Exhibit No. 14 to the

10 witness.)

11 MR. DAVIS: Let me just look

12 over your shoulder, and I will get a copy

13 before we go.

14 Q. It is Avenel Exhibit 1, revised 8-16.xls.

15 A. Okay.

16 Q. And it shows as Exhibit 1?

17 A. Yes.

18 Q. Do you know whether you generated this or

19 Mr. Ferrie generated this?

20 A. I don't. I don't.

21 Q. This one shows vacancy rates of 20, 15,

22 and then 5.5 in example 3; right?

23 A. Right.

24 Q. Do you know where the 5.5 came from?

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1 A. Well, the vacancy, it is the plug number,

2 and that's the number that you change to

3 see what the loan -- what -- at what point

4 you fully fund the loan.

5 Q. Okay.

6 A. So it is a number that goes up and down

7 until you see what point the -- do you see

8 where it says "Maximum loan" down below,

9 the "10 percent constant"?

10 Q. Yes.

11 A. When that number gets as close to 32 even

12 as possible is the vacancy that you use.

13 Q. Okay.

14 A. When you go to the one on -- is it

15 Exhibit 5? Yes. Exhibit 5. You will see

16 the 6.05, which is a pretty odd number.

17 5.5 is a pretty even number. 6.05 seems

18 to get very close to the \$32 million even.

19 Q. So let's just spend a second on plug

20 number, because sometimes it has a

21 pejorative notion associated with it, but

22 you don't mean it in a negative way?

23 A. No.

24 Q. It is the sensitivity number perhaps?

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1 A. Yes. True.

2 Q. So it is the number that you use to -- you

3 raise or lower in order to achieve the

4 result of getting as close to 32 million

5 as you can?

6 A. Correct.

7 Q. Okay. And that is what was going on here?

8 A. I think so.

9 Q. And this one, which is dated subsequent to

10 the last one I showed you, the reserves

11 are \$150 a unit, but they show \$64,000

12 rather than 38,400. Can you explain that

13 to me? That is just the heading?

14 A. I think it is the heading.

15 Q. Okay.

16 A. I think this is the wrong -- 64,000

17 doesn't work. 256 times 150.

18 Q. Yes.

19 A. It should be 38,400.

20 Q. Okay.

21 A. It looks like the heading was changed but

22 not the actual calculated formula there.

23 Q. Okay.

24 A. Right. A good pickup.

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1 Q. That is why -- never mind.

2 MR. SCHER: Mark that.

3 (One-page Examples of Reserve

4 Calculations, production

5 number JH 00914 marked Exhibit

6 No. 15 for identification.)

7 BY MR. SCHER:

8 Q. I show you the next exhibit, and that is

9 Malik Exhibit 15.

10 (Handing Exhibit No. 15 to the

11 witness.)

12 Q. This is a document Bates stamped JH 00914,

13 and -- just in the event I don't have --

14 let me just have this marked.

15 MR. SCHER: I will mark this as

16 well.

17 (Multipage Interest Rate Circle

18 Notification, production

19 numbers JH 00913 through 00920

20 marked Exhibit No. 16 for

21 identification.)

22 MR. SCHER: It is in there as

23 well.

24 MR. DAVIS: 15 is in here?

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1 MR. SCHER: Yes.
 2 (Handing Exhibit No. 16 to the
 3 witness.)
 4 BY MR. SCHER:
 5 Q. This is Malik 16 I have presented to you.
 6 And you will see that Malik 15 is the
 7 second page of Malik 16, just to make
 8 things complicated.
 9 (Pause.)
 10 (The witness viewing Exhibit
 11 No. 16.)
 12 Q. Okay. That is Bates stamped 00914. And
 13 in that, there is examples of reserve
 14 calculations, this document, and it -- and
 15 it changes the \$64,000 reserve from the
 16 original into a new calculation of
 17 \$38,400; right?
 18 A. Yes.
 19 Q. Can you -- this appears to be a slightly
 20 different form than the ones that we have
 21 been reviewing?
 22 A. Yes.
 23 Q. And can you tell me what this document is?
 24 Is this a new form?

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1 A. It looks like it is a new form. Yes.
 2 Q. Are you the one who prepared this?
 3 A. I think I did.
 4 Q. Okay. And this one shows line item
 5 reduction?
 6 A. I don't recall.
 7 Q. And at the end --
 8 A. Yes.
 9 Q. -- of the analysis it shows the final per
 10 unit expense, and in this case, \$4,947?
 11 A. Right.
 12 Q. Can you recall what your purpose was in
 13 preparing this line item reduction aspect
 14 to the Avenel new expenses Excel sheet?
 15 A. I believe it was to show somebody that
 16 we're overly conservative and we can
 17 probably trim some things.
 18 Q. And if I understood you correctly, what
 19 this one shows is that at a reserve of
 20 \$64,000 the loan funding amount would be
 21 30 million, but at a 38,400 reserve, the
 22 loan amount would be 32 million; is that
 23 right?
 24 A. It is not purely the reserve. If you look

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1 at it, the total operating expenses drop,
 2 too.
 3 Q. Okay.
 4 A. They go up to \$140,000.
 5 Q. Okay. I see. By reducing certain
 6 expenses by \$140,000 --
 7 A. Right.
 8 Q. -- plus the reserve, then you can achieve
 9 a loan funding amount of exactly
 10 32 million?
 11 A. Right.
 12 MR. SCHER: Let me show you the
 13 next exhibit.
 14 (One-page Examples of Reserve
 15 Calculations, production
 16 numbers JH 01119 marked Exhibit
 17 No. 17 for identification.)
 18 BY MR. SCHER:
 19 Q. This is Malik Exhibit 17.
 20 (Handing Exhibit No. 17 to the
 21 witness.)
 22 Q. It shows an Avenel Exhibit 1A, new
 23 expenses Excel sheet, and shows a vacancy
 24 rate at 9 percent, and a handwritten note?

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1 A. Yes.
 2 Q. Whose handwritten note is that?
 3 A. That is my handwriting.
 4 Q. Could you read that?
 5 A. You wouldn't be the first to ask me.
 6 Q. I can read it. I just want you to.
 7 A. "Lower than application reserve of 5.38
 8 because more conservative. (Under
 9 application scenario we fund less)."
 10 Q. And that is referring to the 10 percent
 11 constant?
 12 A. The 10 constant. Right. So I know -- I
 13 believe it is saying -- a note to myself
 14 or to somebody that under the application
 15 we're required to fund more than a
 16 10 percent constant would allow us to.
 17 Q. And so do you believe that this is the --
 18 what precipitated -- what caused you to
 19 seek a reduction in the reserve so that
 20 the 10 percent constant could be achieved?
 21 A. I believe what was -- what I was doing and
 22 based on Ivor's comment that we weren't
 23 achieving the 10 percent constant at
 24 80 percent occupancy in a full funding of

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1 the rental achievement reserve was stress
 2 testing it from different ways as to so --
 3 so to see what that means in terms of
 4 reserves or returns of expenses or how
 5 important that really was in terms of the
 6 margin of error within underwriting.
 7 Q. You are basically trying to see how you
 8 can get to the \$32 million loan amount?
 9 A. Well, yes. From an in-house guidelines
 10 credit policy guidelines point of view,
 11 right. But it had nothing to do with the
 12 commitment. The commitment was already
 13 set.
 14 Q. Well, the commitment hadn't been made yet?
 15 A. The commitment was rate locked on --
 16 Q. Oh, that.
 17 A. -- 8-02. It was signed and committed --
 18 signed but not committed at this time. It
 19 hadn't been changed since then.
 20 Q. Okay.
 21 A. So we didn't go back and change the
 22 commitment. We purely were playing with
 23 the numbers in terms of trying to figure
 24 out the risks of being over or under the

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1 the meeting, and you record all that
 2 occurs there? Or is --
 3 A. Sometimes I feel like that's correct, but
 4 no.
 5 Q. Okay. But you do -- you are the one who
 6 prepares this document?
 7 A. I present the document.
 8 Q. Okay.
 9 A. And then I present it -- then it gets
 10 passed around for signature, after
 11 everybody wants me to change things in it.
 12 Q. Okay. Do you recall whether anything was
 13 changed after the first presentment of it?
 14 A. No, I don't.
 15 Q. Okay. Just turning back for a split
 16 second to that hedge cost e-mail, which
 17 said, you know, as of today your cost is
 18 \$355,000, did anybody say, "Oh, my God,
 19 that's a lot of money," or "Geez," or
 20 anything?
 21 A. Not to my knowledge, no.
 22 Q. Take a look at this Malik 1 again. The
 23 first box there that says "Current
 24 'As-Is'," "Stabilized," "Stabilized Cap

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1 10 percent constant and how to paper it
 2 for the internal approval process.
 3 Q. And to get it papered for your internal
 4 approval process, you had to get the
 5 permission of Mr. Thomas; am I right about
 6 that?
 7 A. Yes.
 8 Q. If you would turn back to --
 9 MR. DAVIS: When you have a
 10 minute, why don't we take a break, but we
 11 can do this first, if you would like to.
 12 MR. SCHER: Let's take a break,
 13 because we're in good shape.
 14 (Recess taken at 3:19 p.m.)
 15 (Recess ended at 3:28 p.m.)
 16 BY MR. SCHER:
 17 Q. Would you take a look at Malik Exhibit 1
 18 again, please? Is that the loan approval?
 19 A. Yes.
 20 Q. The internal loan approval document?
 21 A. Yes.
 22 Q. Now is this document prepared by you?
 23 A. Yes.
 24 Q. And are you kind of like the secretary to

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1 Rate" --
 2 A. Yes.
 3 Q. -- can you explain to me what that is?
 4 A. Well, ordinarily you have three numbers
 5 below it, like you do underneath the
 6 "Stabilized" box.
 7 Q. Right.
 8 A. Three rows.
 9 Q. But you can't have it, because it is under
 10 construction?
 11 A. There is no history.
 12 Q. And you have a valuation of 47,302,000 and
 13 a cap rate of 7.25? Do you see that?
 14 A. Yes.
 15 Q. What if the cap rate at the time of the
 16 closing of the loan had spiked to 10?
 17 A. That doesn't make any difference.
 18 MR. DAVIS: Objection.
 19 Q. None whatsoever?
 20 A. No. We had a commitment. We honor our
 21 commitments.
 22 Q. Okay. On the JH 00407 --
 23 A. Yes.
 24 Q. -- at the bottom of the page, there are

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1 average rental rate actual and average
 2 rental rate market? Do you see that in
 3 the middle of the page at the bottom, just
 4 above that box, the box which results in
 5 the BAA?
 6 A. Yes.
 7 Q. So where did you get the information to
 8 support that average rate market?
 9 A. Average rate market, I believe John Ferrie
 10 gave to me.
 11 Q. Okay.
 12 A. Or it could have come off of an external
 13 report of some sort.
 14 Q. Isn't that a significant disparity between
 15 the actual and the market rate in that
 16 instance?
 17 A. No.
 18 Q. No?
 19 A. Not in this instance.
 20 Q. Why is that? Because it is a good
 21 project?
 22 A. Because it is an upper end, newly
 23 constructed -- well constructed, I might
 24 add -- project in a market that has

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1 largely older, smaller units.
 2 Q. You liked this project?
 3 A. Yes.
 4 Q. On JH 00408, there is a vacancy rate of
 5 5 percent shown?
 6 A. Right.
 7 Q. And that's the -- is that the vacancy rate
 8 that was assumed for this approval?
 9 A. That is the vacancy rate that I think we
 10 expect in the long term. We expect that
 11 as a stabilized year-to-year vacancy rate.
 12 Q. Okay. And on this document, you show a
 13 total operating expense per unit of 4,900;
 14 is that right? I can't -- I'm not sure my
 15 eyes are --
 16 A. I think that is right.
 17 Q. 4,976?
 18 A. Right.
 19 Q. Is that -- and you show a management fee
 20 of 3.50. That is down from the 4 that was
 21 originally --
 22 A. Yes.
 23 Q. -- set forth?
 24 A. Yes. That original, that is -- the reason

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1 it is called a preliminary loan
 2 underwriting worksheet, or a preliminary
 3 worksheet, is because it is very
 4 preliminary.
 5 Q. Okay.
 6 A. It is adjusted over time as we learn more.
 7 Q. Can you explain to me -- I think three
 8 lines up from the bottom -- well, the net
 9 breakeven rent and the breakeven interest
 10 rate, interest only, what is SNCF, can you
 11 explain what those rows are?
 12 A. The breakeven interest rate?
 13 Q. Yes.
 14 A. Hold on a second.
 15 (Pause.)
 16 A. So you are talking about the third line
 17 from the bottom?
 18 Q. I think it is the fourth line from the
 19 bottom. Do you see it? 10.80?
 20 A. 10.60?
 21 Q. 10.6. It could be 6. Yes.
 22 A. That is the -- that is the constant. That
 23 is the breakeven interest rate. That is
 24 the constant. So it -- the cash flow from

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1 this underwriting equals 10.6 percent of
 2 the loan balance.
 3 Q. Okay. So?
 4 A. So if you take the cash flow and divide
 5 the \$32 million into it, you will get
 6 10.6 percent.
 7 Q. Turn to the next page.
 8 A. That is similar to the constant.
 9 Q. Okay.
 10 A. In comparison to the constant.
 11 Q. Okay. Now this -- the next page is
 12 JH 00409?
 13 A. Yes.
 14 Q. And it says "John Hancock Life Insurance
 15 Company, A meeting of the Mortgage and
 16 Real Estate Loan Committee was held on" --
 17 A. Yes.
 18 Q. -- "August 16, 2004, voted to authorize
 19 the following investment."
 20 A. Right.
 21 Q. Is this the actual record of what was
 22 voted on and approved by John Hancock?
 23 A. There was not an investment -- there was
 24 not a -- well, there was not a meeting --

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1 investment committee meeting.
 2 Q. There was not a meeting?
 3 A. A committee meeting. It is the form only.
 4 Q. Okay.
 5 A. Because there is a signature form on top
 6 of it.
 7 Q. Okay. But this is what was voted on and
 8 approved?
 9 A. Yes.
 10 Q. What appears on this sheet?
 11 A. Sure.
 12 Q. This says that the maximum loan to value
 13 is 68.09 percent?
 14 A. Yes.
 15 Q. Is that the 75 percent that was to be
 16 achieved?
 17 A. We're saying -- what this means is that
 18 when it is stabilized at 5 percent
 19 vacancy, we expect it to be a 68 percent
 20 LTV.
 21 Q. I see. And similarly, when the SCR is
 22 1.45, and that differs from the 1.25?
 23 A. Yes.
 24 Q. But this is at a stabilized point?

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1 A. Correct.
 2 Q. It lists you as the investment officer;
 3 Ryan Hawley as the second investment
 4 officer. Who was he?
 5 A. He was my analyst to help with some
 6 things.
 7 Q. Is he still with the company?
 8 A. He is not.
 9 Q. Where is he?
 10 A. I'm not quite sure.
 11 Q. Was he downsized?
 12 A. No. He chose to leave of his own accord.
 13 Q. Okay.
 14 A. A better job. A better person to work
 15 for.
 16 Q. I can see that.
 17 (Laughter.)
 18 Q. And the closing analyst is Robin Costa?
 19 A. Yes.
 20 Q. What job did she have?
 21 A. The job I described earlier of --
 22 Closing?
 23 A. -- accumulating all the information for
 24 closing --

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1 Q. Okay.
 2 A. -- and effecting the closing.
 3 Q. So that assignment was made right at the
 4 time of the loan approval; is that right?
 5 A. Actually before the loan approval.
 6 Q. Okay.
 7 A. But yes.
 8 Q. And the internal counsel, is that
 9 Nathaniel Margolis?
 10 A. Yes.
 11 Q. Is he still in-house counsel --
 12 A. Yes.
 13 Q. -- at John Hancock?
 14 A. Yes.
 15 Q. What role did he play in this?
 16 A. Nathaniel would have helped me with the
 17 looking at the language and the supplement
 18 to the commitment and the commitment and
 19 seeing, also checking to see if the loan
 20 approval matches what the commitment
 21 requires and if the loan approval
 22 highlights everything that needed to be
 23 highlighted out from the commitment or
 24 describes everything of importance that is

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1 unusual.
 2 Q. Now as I understand it, this JH 409 is
 3 intended to reflect the project, the
 4 development Avenel at Montgomery Square,
 5 at its stabilized point?
 6 A. Yes.
 7 Q. And the front page of this document,
 8 JH 00405, is intended to show the very
 9 same thing, the valuation -- the property
 10 as at stabilized; right?
 11 A. Yes. For the most part.
 12 Q. Okay. Well, can you explain to me the
 13 disparity between JH 405, in particular
 14 the stabilized unit -- per unit value of
 15 184,777 and the 184,804 per unit as the
 16 summation value on page JH 00409?
 17 A. So you want me to look at 409 and 405?
 18 Q. Yes. 405, 409; 188,477, 184,804.
 19 A. Okay. And 409, I rounded up the number
 20 that is on 405.
 21 Q. Okay.
 22 A. If you will look at the NCF, net cash flow
 23 basis. Or I rounded down the number. If
 24 you look at the NOI basis, it is 47,302.

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1 For presentation on the rest of the
2 document, I rounded it down to an even
3 number.
4 Q. The next page is JH 410, and that is
5 headed "Voted Investment." What is the
6 purpose of this document as compared with
7 the other documents? Is this what was
8 voted and approved?
9 A. 407.
10 Q. 410. Is this what was voted and approved?
11 A. It is all part of the same approval.
12 Q. Okay. On page JH 412, there is a box
13 headed "Weaknesses of Deal"?
14 A. Yes.
15 Q. And here it says that the operating
16 expenses were conservatively estimated to
17 be 5,527 a unit per year. Right?
18 A. It says that.
19 Q. Yes?
20 A. Yes.
21 Q. A conservative estimate would be to have
22 higher operating expenses; right?
23 A. Pardon?
24 Q. A conservative, in this context, means to

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1 have higher expenses?
2 A. Yes.
3 Q. Right?
4 A. Yes. It also looks like the wrong
5 number.
6 Q. It looks like what?
7 A. The wrong number.
8 Q. The wrong number?
9 A. Yes.
10 Q. And what is the right number?
11 A. The number that is on page JH 419.
12 Q. Is that just a mistake?
13 A. It looks like it. Yes, it is.
14 Q. JH 419 shows what?
15 A. 4,974.
16 Q. 4,974?
17 A. Right.
18 Q. But is this assertion that it is a
19 conservative number accurate?
20 A. I think it is still accurate. Yes. It is
21 reduced 10 percent, but it is still
22 accurate.
23 Q. And then you think that 4,900 is
24 conservative as well?

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1 A. Yes.
2 Q. JH -- to back up -- JH 408, that shows
3 4,900? That is where the 4,900 comes
4 from; right?
5 A. 408?
6 Q. Yes. 4,976?
7 A. Well, for the obvious reason that this --
8 that page is part of the entire link in
9 the Excel, where the block on 412 is not
10 part of the Excel. It is in the sheet,
11 but it is a Word document embedded in
12 there, so you have to go back and manually
13 change it.
14 Q. I see.
15 A. It doesn't change automatically with the
16 other numbers.
17 Q. Right. On the first page of Malik
18 Exhibit 1, it has the disbursement
19 requirements. Do you see that?
20 A. Malik Exhibit 1, disbursement
21 requirements?
22 Q. Specific conditions?
23 A. Okay.
24 Q. And the disbursements requirements are to

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1 have certain rents, a minimum net cash
2 flow, debt service coverage ratio?
3 A. Yes.
4 Q. And the 10 percent breakeven, according to
5 underwriting; right?
6 A. Yes.
7 Q. Now that 10 percent breakeven according to
8 underwriting is not contained in the loan
9 application, is it?
10 A. No.
11 MR. DAVIS: Objection.
12 You can respond.
13 MR. SCHER: I think I am going
14 to ask you to step outside, just for a
15 couple of minutes.
16 THE WITNESS: Okay.
17 MR. SCHER: I think I am close
18 to the end.
19 MR. DAVIS: Okay.
20 (Recess taken at 3:46 p.m.)
21 (Recess ended at 3:48 p.m.)
22 MR. SCHER: I have no further
23 questions.
24 MR. DAVIS: Okay. I have no

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1 questions.
2 (Whereupon, at 3:48 p.m., the
3 deposition was adjourned.)
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Page 223

1 ATTACH TO DEPOSITION OF: TIMOTHY J. MALIK
2
3 CASE: JOHN HANCOCK LIFE INSURANCE COMPANY
VS. VESTMONT LIMITED PARTNERSHIP ET ALS

ERRATA SHEET

4 INSTRUCTIONS: After reading the
5 transcript of your deposition, note any
6 change or correction to your testimony and
7 the reason therefor on this sheet. DO NOT
8 make any marks or notations on the
9 transcript volume itself. Sign and date
10 this errata sheet (before a Notary Public,
if required). Refer to Page 222 the
transcript for errata sheet distribution
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20 I have read the foregoing transcript
of my testimony, and except for any
21 corrections or changes noted above, I
hereby subscribe to the transcript as an
22 accurate record of the statements made by
me.
23
24

TIMOTHY J. MALIK

Page 222

1 DEPONENT'S ERRATA SHEET
2 AND SIGNATURE INSTRUCTIONS
3 The original of the Errata Sheet
4 has been delivered to Brian A. Davis, Esq.
5 When the Errata Sheet has been
6 completed by the deponent and signed, a
7 copy thereof should be delivered to each
8 party of record and the ORIGINAL delivered
9 to Howard D. Scher, Esq., to whom the
10 original deposition transcript was
11 delivered.
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17 your deposition, indicate any corrections
18 or changes to your testimony and the
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20 REPLACE THIS PAGE OF THE TRANSCRIPT WITH
21 THE COMPLETED AND SIGNED ERRATA SHEET WHEN
22 RECEIVED.
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24

Page 224

CERTIFICATE

1 Commonwealth of Massachusetts
2 Plymouth, ss

3
4
5 I, Judith McGovern Williams, a
6 Registered Professional Reporter and
7 Notary Public in and for the Commonwealth
8 of Massachusetts, do hereby certify:

9 That TIMOTHY J. MALIK, the
10 witness whose deposition is hereinbefore
11 set forth, was duly sworn by me and that
12 such deposition is a true record of the
13 testimony given by the said witness.

14 IN WITNESS WHEREOF, I have
15 hereunto set my hand this day of
16 , 2006.

17
18
19 Judith McGovern Williams
20 Registered Professional Reporter
21 Certified Realtime Reporter
22 Certified LiveNote Reporter
23 Certified Shorthand Reporter No. 130993
24

My Commission expires:

April 2, 2010

CONDENSED TRANSCRIPT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHN HANCOCK LIFE CIVIL ACTION
INSURANCE COMPANY,

Plaintiff/Counterclaim
Defendant,

vs.

VESTMONT LIMITED
PARTNERSHIP, et al.,

Defendant/Counterclaim
Plaintiff. NO. 0511614 WGY

Oral deposition of JOHN
PATRICK FERRIE, taken at the law
offices of BUCHANAN INGERSOLL, P.C.,
Eleven Penn Center, 14th Floor, 1835
Market Street, Philadelphia,
Pennsylvania, on Wednesday,
February 1, 2006, at 9:36 a.m.,
before Rosemary Locklear, Registered
Professional Reporter, Certified
Shorthand Reporter (NJ), Certified
Realtime Reporter and Notary Public,
pursuant to notice.



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2	4
<p>1 APPEARANCES:</p> <p>2 CHOATE HALL & STEWART, L.L.P.</p> <p>3 BY: BRIAN A. DAVIS, ESQUIRE</p> <p>4 bad@choate.com</p> <p>5 Two International Place</p> <p>6 Boston, Massachusetts 02110</p> <p>7 (617) 248-5000</p> <p>8 Appearing on behalf of Plaintiff</p> <p>9 BUCHANAN INGERSOLL, P.C.</p> <p>10 BY: HOWARD D. SCHER, ESQUIRE</p> <p>11 scherhd@bipc.com</p> <p>12 Eleven Penn Center, 14th Floor</p> <p>13 1835 Market Street</p> <p>14 Philadelphia, Pennsylvania 19103</p> <p>15 (215) 665-8700</p> <p>16 Appearing on behalf of Defendant</p> <p>17 ALSO PRESENT:</p> <p>18 JAMES KOLLER</p> <p>19 EXAMINATION INDEX</p> <p>20 JOHN PATRICK FERRIE</p> <p>21 BY MR. SCHER 6</p> <p>22 EXHIBIT INDEX</p> <p>23 MARKED</p> <p>24 Ferrie</p> <p>1 1-page copy of E-mail 89</p> <p>2 dated 8/11/04 from John</p> <p>3 Ferrie, plus attachment</p> <p>4 JH 00133-JH 00134</p> <p>5 2 28-page copy of document 109</p> <p>6 dated 7/30/04 entitled</p> <p>7 "Application to John</p> <p>8 Hancock Life Insurance</p> <p>9 Company For A First Mortgage</p> <p>10 Loan," plus attachments, JH</p> <p>11 00327-JH 01121</p>	<p>1 EXHIBIT INDEX (CONTINUED)</p> <p>2 MARKED</p> <p>3 Ferrie</p> <p>4 11 2-page copy of letter 161</p> <p>5 dated 7/29/04 to</p> <p>6 Montgomery Square</p> <p>7 Partnership from John P.</p> <p>8 Ferrie, JH 00220-JH 00221</p> <p>9 12 2-page copy of E-mail 162</p> <p>10 dated 7/30/04 to John</p> <p>11 Ferrie from Timothy J.</p> <p>12 Malik, JH 00160-JH 00161</p> <p>13 13 2-page copy of E-mail 165</p> <p>14 dated 7/30/04 to John</p> <p>15 Ferrie from Timothy J.</p> <p>16 Malik, JH 00162-JH 00163</p> <p>17 14 1-page copy of E-mail 167</p> <p>18 dated 8/2/04 to John</p> <p>19 Ferrie from Timothy J.</p> <p>20 Malik, JH 00140</p> <p>21 15 1-page copy of document 169</p> <p>22 entitled "Interest Rate</p> <p>23 Circle Form," plus</p> <p>24 attachments, JH 00397-JH</p> <p>00404</p> <p>16 2-page copy of document 172</p> <p>17 entitled "John Hancock</p> <p>18 Life Insurance Company"</p> <p>19 plus attachments, JH</p> <p>20 00405-JH 00425</p> <p>21 17 1-page copy of document 174</p> <p>22 dated 8/17/04 entitled</p> <p>23 "Memorandum," JH 01174</p> <p>24 18 2-page copy of E-mail 176</p> <p>dated 5/31/05 to Timothy</p> <p>A. Roseen from Timothy J.</p> <p>Malik, JH 01211-JH 01212</p>
3	5
<p>1 EXHIBIT INDEX (CONTINUED)</p> <p>2 MARKED</p> <p>3 Ferrie</p> <p>4 3 1-page copy of E-mail 120</p> <p>5 dated 8/11/04 to John</p> <p>6 Ferrie from Timothy J.</p> <p>7 Malik, plus attachment</p> <p>8 JH 00131-JH 00132</p> <p>9 4 1-page copy of E-mail 135</p> <p>10 dated 8/11/04 to John</p> <p>11 Ferrie from Timothy J.</p> <p>12 Malik, JH 00135</p> <p>13 5 2-page copy of E-mail 142</p> <p>14 dated 6/17/04 to Timothy</p> <p>15 J. Malik from John</p> <p>16 Ferrie, plus attachments</p> <p>17 JH 00100-JH 00105</p> <p>18 6 4-page copy of letter 146</p> <p>19 dated 6/18/04 to Robert</p> <p>20 W. Kelly from John P.</p> <p>21 Ferrie, JH 00074-JH 00077</p> <p>22 7 4-page copy of letter 147</p> <p>23 dated 6/18/04 to Robert</p> <p>24 W. Kelly from John P.</p> <p>Ferrie, plus attachments</p> <p>V 1181-V 1188</p> <p>8 4-page copy of letter 148</p> <p>dated 7/21/04 to Robert</p> <p>W. Kelly from John P.</p> <p>Ferrie, plus attachment</p> <p>JH 00733-JH 00737</p> <p>9 1-page copy of E-mail 149</p> <p>dated 7/29/04 from John</p> <p>Ferrie, JH 00219</p> <p>10 1-page copy of E-mail 157</p> <p>dated 7/29/04 to John</p> <p>Ferrie from Timothy J.</p> <p>Malik, JH 00173</p>	<p>1 EXHIBIT INDEX (CONTINUED)</p> <p>2 MARKED</p> <p>3 Ferrie</p> <p>4 19 1-page copy of E-mail 180</p> <p>5 dated 6/6/05 to Joe Kelly</p> <p>6 from John Ferrie, JH</p> <p>7 01101</p> <p>8 20 1-page copy of E-mail 181</p> <p>9 dated 6/7/05 to John</p> <p>10 Ferrie from Jim Koller</p> <p>11 JH 00149</p> <p>12 21 1-page copy of E-mail 181</p> <p>13 dated 6/9/05 to Timothy</p> <p>14 J. Malik from John</p> <p>15 Ferrie, plus attachments</p> <p>16 JH 01196-JH 01210</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

<p style="text-align: center;">6</p> <p>1 JOHN PATRICK FERRIE, having 2 been duly sworn, was examined and 3 testified as follows: 4 EXAMINATION 5 BY MR. SCHER: 6 Q. Would you state your name 7 for the record, please. 8 A. John Ferrie. 9 Q. My name is Howard Scher. 10 We just introduced ourselves to one 11 another informally. I represent the 12 defendants in this case. 13 You understand that? 14 A. Yes. 15 Q. Have you ever had your 16 deposition taken before? 17 A. Yes. 18 Q. Roughly how many times or 19 precisely how many times? 20 A. Once. 21 Q. Once? 22 A. Yeah. 23 Q. Okay. And what was the 24 context of that case? What kind of</p>	<p style="text-align: center;">8</p> <p>1 than scheduling the time convenient 2 for you? 3 A. I met with my attorney. 4 Q. And when did that meeting 5 occur? 6 A. Yesterday. 7 Q. And what was the duration 8 of that meeting, approximately? 9 A. Three hours. 10 Q. Did you review documents in 11 connection with that? 12 A. Yes. 13 Q. What, in general terms, was 14 your role in this -- in the 15 arrangements with -- in connection 16 with the work with Vesterra 17 Corporation, the defendants in this 18 case? What was your role? 19 A. Originate the transaction. 20 Q. And what does that mean? 21 A. Act as a go-between. 22 Q. What did originating and 23 acting as a go-between result in your 24 doing in connection with this</p>
<p style="text-align: center;">7</p> <p>1 case was it? What was the subject? 2 A. It was a -- it was a 3 condemnation. 4 Q. Okay. So that you know 5 that my questions and your answers 6 are being memorialized by the court 7 reporter and will ultimately be 8 transcribed in writing and so that 9 when you see -- when you hear my 10 questions and you give your answers, 11 that's the way they'll appear in a 12 writing. 13 You understand that? 14 A. Yes. 15 Q. If at any time during the 16 course of this deposition you don't 17 understand my question, you have the 18 perfect right, and in fact I 19 encourage you, to ask for a 20 clarification. 21 Is that understood by you? 22 A. Yes. 23 Q. What have you done to 24 prepare for this deposition other</p>	<p style="text-align: center;">9</p> <p>1 transaction? 2 A. Finding -- no, I can't say 3 I did that because -- meeting with 4 the borrower. 5 Q. What else? 6 A. Bringing the loan to John 7 Hancock. 8 Q. What else? 9 A. That's it. 10 Q. Okay. After you met with 11 the borrower and brought the loan to 12 John Hancock, what else did you do in 13 connection with the prospective loan? 14 A. Gave the borrower the 15 application. 16 Q. Okay. What's your job with 17 John Hancock in 2004, spring, summer 18 of 2004? What was your job? 19 A. Manage the regional office. 20 Q. And what are your duties 21 and responsibilities? Is that what 22 your job is now? 23 A. Uh-huh. Yes. 24 Q. What region is covered by</p>



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<p>10</p> <p>1 the office you manage?</p> <p>2 A. Pennsylvania, New Jersey,</p> <p>3 Delaware, and Puerto Rico.</p> <p>4 MR. DAVIS: Like the First</p> <p>5 Circuit.</p> <p>6 BY MR. SCHER:</p> <p>7 Q. Not the Virgin Islands?</p> <p>8 A. No.</p> <p>9 Q. Okay. And what are your</p> <p>10 duties and responsibilities as</p> <p>11 manager of that region?</p> <p>12 A. Manage the office.</p> <p>13 Q. Hire, fire, promote the</p> <p>14 employees who work in that office?</p> <p>15 A. Yes.</p> <p>16 Q. And how many employees work</p> <p>17 in that office?</p> <p>18 A. Three, counting myself.</p> <p>19 Q. And who are they?</p> <p>20 A. Myself, Brian Depolis,</p> <p>21 D-E-P-O-L-I-S, and Helene McCole,</p> <p>22 H-E-L-E-N-E M-C-C-O-L-E.</p> <p>23 Q. What's Ms. McCole's duty?</p> <p>24 What's her job?</p>	<p>12</p> <p>1 Q. In what ways do you</p> <p>2 identify them?</p> <p>3 A. Contacts I've made over the</p> <p>4 years.</p> <p>5 Q. Anything else?</p> <p>6 A. Newspaper articles,</p> <p>7 associations, referrals.</p> <p>8 Q. Anything else?</p> <p>9 A. Not that I can think of.</p> <p>10 Q. And you said you service</p> <p>11 the loans?</p> <p>12 A. Yes.</p> <p>13 Q. What does that entail?</p> <p>14 A. Once the loans are closed,</p> <p>15 we do an annual inspection.</p> <p>16 Q. Anything else?</p> <p>17 A. Evaluate the rent roll and</p> <p>18 the income and expense for the prior</p> <p>19 year.</p> <p>20 Q. Anything else?</p> <p>21 A. If it -- if there's a</p> <p>22 problem, we report it to home office.</p> <p>23 Q. How is your performance</p> <p>24 evaluated in connection with -- in</p>
<p>11</p> <p>1 A. A combination.</p> <p>2 Q. Of?</p> <p>3 A. Closer, admin.</p> <p>4 Q. Anything else?</p> <p>5 A. We all fill in.</p> <p>6 Q. I'm asking about her job.</p> <p>7 A. That's the major duties.</p> <p>8 Q. And Mr. Depolis, what's his</p> <p>9 job?</p> <p>10 A. He's second in command.</p> <p>11 Q. And what's your job besides</p> <p>12 managing the office?</p> <p>13 A. Originate loans.</p> <p>14 Q. What else?</p> <p>15 A. Service the loans.</p> <p>16 Q. What else?</p> <p>17 A. That's it.</p> <p>18 Q. Okay. What do you do to</p> <p>19 originate the loans?</p> <p>20 A. I call on prospective</p> <p>21 borrowers, developers.</p> <p>22 Q. And how do you identify</p> <p>23 them?</p> <p>24 A. Any way I can.</p>	<p>13</p> <p>1 your employment?</p> <p>2 A. What do you mean?</p> <p>3 Q. How is your performance as</p> <p>4 an employee judged? In other words,</p> <p>5 what is the process by which your</p> <p>6 employment is judged, evaluated? Are</p> <p>7 you subjected to an annual review,</p> <p>8 for example? Does your superior --</p> <p>9 A. Yes. I have an annual</p> <p>10 review.</p> <p>11 Q. Okay. And what are the</p> <p>12 criteria employed in connection with</p> <p>13 your annual review?</p> <p>14 A. Well, they're -- number</p> <p>15 one, am I a team player? Number two,</p> <p>16 how is my closed loan production?</p> <p>17 Number three, how are the closed</p> <p>18 loans performing?</p> <p>19 Q. Anything else?</p> <p>20 A. I'd say how am I perceived</p> <p>21 overall by the home office personnel?</p> <p>22 Q. Is your compensation</p> <p>23 affected in any way by your</p> <p>24 performance?</p>



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<p style="text-align: center;">14</p> <p>1 A. Yes.</p> <p>2 Q. Can you tell me, how are</p> <p>3 you compensated? What's your</p> <p>4 compensation?</p> <p>5 A. You mean dollars?</p> <p>6 Q. Dollars and what's it</p> <p>7 consist of?</p> <p>8 THE WITNESS: Is that --</p> <p>9 MR. DAVIS: You can provide</p> <p>10 it to him.</p> <p>11 THE WITNESS: Salary and</p> <p>12 commission.</p> <p>13 BY MR. SCHER:</p> <p>14 Q. And what's the salary?</p> <p>15 A. Salary is 150.</p> <p>16 Q. Has that changed from 2004</p> <p>17 to 2005?</p> <p>18 A. Yes.</p> <p>19 Q. How did it change?</p> <p>20 A. 2004, it was probably 120.</p> <p>21 Q. You received a \$30,000</p> <p>22 salary increase, approximately,</p> <p>23 between 2004 and 2005?</p> <p>24 A. Uh-huh. Yes.</p>	<p style="text-align: center;">16</p> <p>1 the office expenses, there is a</p> <p>2 sliding scale from 10 to 20 percent,</p> <p>3 10 percent for the first -- for the</p> <p>4 doubling of the expense.</p> <p>5 So if the expense is worth,</p> <p>6 let's say, 500,000, the first level</p> <p>7 would be a million. If your fees</p> <p>8 were a million, you'd get 10 percent</p> <p>9 of the differential and over that you</p> <p>10 get 20 percent.</p> <p>11 Q. And what's the fee on a</p> <p>12 closed loan?</p> <p>13 A. Typically, half a point,</p> <p>14 which if it's a million-dollar loan,</p> <p>15 that would be \$5,000.</p> <p>16 Q. Is your commission</p> <p>17 influenced at all by the originating</p> <p>18 of loans that don't close?</p> <p>19 A. No.</p> <p>20 Q. So in this instance, the</p> <p>21 Avenel loan, which did not close, the</p> <p>22 fees generated, the \$965,000 in fees</p> <p>23 that were generated, had absolutely</p> <p>24 no effect on your compensation. Do I</p>
<p style="text-align: center;">15</p> <p>1 Q. What was that based on?</p> <p>2 A. Performance.</p> <p>3 Q. And the performance</p> <p>4 criteria that you've just</p> <p>5 articulated?</p> <p>6 A. Yes.</p> <p>7 Q. Nothing else. Nothing</p> <p>8 else.</p> <p>9 A. For example?</p> <p>10 Q. No. I mean, have you</p> <p>11 identified all of the criteria that</p> <p>12 were employed --</p> <p>13 A. Yes. Yes.</p> <p>14 Q. And you said -- and part of</p> <p>15 it is commission. Could you describe</p> <p>16 to me the commission program --</p> <p>17 A. Yes.</p> <p>18 Q. -- that is, what are the</p> <p>19 criteria?</p> <p>20 A. We are -- for every closed</p> <p>21 loan we're allocated a certain fee.</p> <p>22 And we're also charged with</p> <p>23 controlling office expenses. To the</p> <p>24 extent that the credited fee exceeds</p>	<p style="text-align: center;">17</p> <p>1 have that right?</p> <p>2 A. Yes.</p> <p>3 Q. Are they accounted for in</p> <p>4 the production of your office in any</p> <p>5 way?</p> <p>6 In other words, are the</p> <p>7 fees generated by the -- the</p> <p>8 application processing commitment</p> <p>9 fees generated in connection with the</p> <p>10 Avenel loan, are they recorded in the</p> <p>11 results of your office?</p> <p>12 A. No.</p> <p>13 Q. Where are they reflected?</p> <p>14 Do you know?</p> <p>15 A. I don't know.</p> <p>16 Q. You said you acted as a</p> <p>17 go-between.</p> <p>18 What did you -- between the</p> <p>19 borrower and who?</p> <p>20 A. And home office.</p> <p>21 Q. And who in home office --</p> <p>22 do you report to someone in home</p> <p>23 office?</p> <p>24 A. I report to -- my boss is</p>



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<p>18</p> <p>1 Bill McPadden, M-C-P-A-D-D-E-N. 2 Q. And what's his title? 3 Something. 4 What's his duties? What 5 are his duties? Forget his title. 6 A. He's head of all the 7 production in the U.S. 8 Q. Okay. U.S. production. 9 How many offices are there, 10 approximately, across the United 11 States? 12 A. Nine. 13 Q. And do you work with others 14 in the home office besides Mr. 15 McPadden? 16 A. Yes. 17 Q. And who do you work with? 18 A. Tim Malik. 19 Q. And what's his function? 20 A. He's a credit officer. 21 Q. In 2004 what was he? 22 A. 2004, he was an investment 23 officer. 24 Q. Did you work with him in</p>	<p>20</p> <p>1 A. On the term sheet. 2 Q. Any others? 3 A. No. 4 Q. Did your office originate 5 the Regatta loan? 6 A. Yes. 7 Q. And when was that loan 8 originated, to the best of your 9 recollection, approximately? It was 10 before the Avenel loan; right? 11 A. Yes. I would say 12 approximately late 2003 to early 13 2004. 14 Q. And when was the -- when 15 did it become known that that loan 16 would not close? 17 A. Late 2004. 18 Q. And did you participate in 19 the decision with respect to the 20 consequence of the loan not closing 21 in connection with Regatta? 22 A. No. 23 MR. DAVIS: Objection. 24 Just pause briefly before</p>
<p>19</p> <p>1 2004 as well? 2 A. Yes. 3 Q. And who else in the home 4 office do you work with -- did you 5 work with in 2004? 6 A. On Avenel or -- 7 Q. Yes, on Avenel. 8 A. I believe Nathaniel 9 Margolis. 10 Q. And he's counsel? 11 A. Yes. Inside counsel. 12 Q. What matters did you work 13 on with him in connection with 14 Avenel? 15 A. He was the -- he and Tim 16 would make the decisions on 17 negotiated items. 18 Q. And when you say 19 "negotiated items," you mean 20 negotiated items in the loan 21 application? 22 A. Yes. 23 Q. Anywhere else? Any other 24 negotiated items?</p>	<p>21</p> <p>1 you respond. 2 THE WITNESS: I'm sorry. 3 MR. SCHER: What was the 4 basis for the objection? 5 MR. DAVIS: I think the 6 question was vague. 7 MR. SCHER: Okay. 8 BY MR. SCHER: 9 Q. In connection with the 10 Regatta loan, a decision was made to 11 keep the application processing and 12 commitment fees and to seek no more 13 in the way of damages. 14 What, if any, role did you 15 play in that decision? 16 You can answer that 17 question. 18 A. None. 19 Q. Who did make that decision? 20 A. I don't know everybody 21 involved, but -- 22 Q. Identify any -- 23 A. Tim Malik. 24 Q. In the spring of 2005 a</p>



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<p style="text-align: center;">22</p> <p>1 decision was made not to accept the 2 fees paid by Avenel, paid in 3 connection with the Avenel project, 4 but, rather, to seek damages. 5 What, if any, role did you 6 play in that decision? 7 MR. DAVIS: Objection. 8 You can respond. 9 MR. SCHER: What was that? 10 What was the basis? 11 MR. DAVIS: The timing of 12 that is – I don't think it's quite 13 accurate. 14 MR. SCHER: Okay. 15 BY MR. SCHER: 16 Q. Forget the timing. What, 17 if any, role did you play in 18 connection with the decision to seek 19 damages beyond the fees paid by the 20 borrower, prospective borrower, in 21 connection with the Avenel project? 22 MR. DAVIS: You can 23 respond. 24 THE WITNESS: None.</p>	<p style="text-align: center;">24</p> <p>1 And just answer yes or no. 2 A. No. 3 Q. Do you know any reason why? 4 MR. DAVIS: Same 5 instruction, same objection. 6 BY MR. SCHER: 7 Q. Yes or no. 8 A. No. 9 Q. On how many occasions did 10 you meet with Messrs. Koller, Kelly, 11 or Palopoli? 12 MR. DAVIS: I'm assuming 13 you're talking about with respect to 14 Avenel? 15 MR. SCHER: Yes. 16 THE WITNESS: Over what 17 period of time? 18 BY MR. SCHER: 19 Q. Between 2004 and 2005. 20 A. I'm not completely sure, 21 but I would say probably four to six 22 times. 23 Q. Did you ever meet with 24 Frank Palopoli?</p>
<p style="text-align: center;">23</p> <p>1 BY MR. SCHER: 2 Q. And who did make that 3 decision? 4 A. Again, I don't know 5 everybody involved, but Tim Malik was 6 my source. 7 Q. Okay. Do you know anyone 8 else who was involved in that 9 decision? 10 A. No. 11 Q. Do you know why that 12 decision was made? 13 MR. DAVIS: Objection. 14 And I instruct you that in 15 answering Mr. Scher's question, you 16 should not disclose any information 17 that you obtained from counsel or 18 from other people at Hancock that 19 would disclose communications with 20 counsel. 21 MR. SCHER: Okay. 22 BY MR. SCHER: 23 Q. So my first question is, do 24 you know why that decision was made?</p>	<p style="text-align: center;">25</p> <p>1 A. Yes. 2 Q. About how many times did 3 you meet with him? 4 A. I believe only two. 5 Q. Okay. And can you recall 6 when those meetings occurred? In 7 general terms. 8 A. Once we went to lunch at 9 Myrna's with Mr. Koller and Mr. 10 Kelly, and the other time I saw him 11 at the Avenel office. 12 Q. Did you know any of those 13 gentlemen prior to the time of the 14 Avenel? 15 A. Yes. 16 Q. And how did you know them? 17 A. Mr. Koller and I used to be 18 on a Chicago Title board of advisors. 19 Q. And approximately when was 20 that? 21 A. Ten years? 22 Q. Is that one of the 23 associations that you belong to from 24 which you generate – originate</p>



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<p>26</p> <p>1 loans?</p> <p>2 A. It's no longer active.</p> <p>3 Q. Was that one?</p> <p>4 A. At that time, yes.</p> <p>5 Q. Yes.</p> <p>6 What other associations do</p> <p>7 you participate in in – what other</p> <p>8 associations have you participated in</p> <p>9 in order to originate loans?</p> <p>10 A. Tri-State Real Estate</p> <p>11 Organization.</p> <p>12 And again, what's the time</p> <p>13 frame? Recent? Since I've been in</p> <p>14 business?</p> <p>15 Q. Since you've been in</p> <p>16 business.</p> <p>17 A. Mortgage Bankers</p> <p>18 Association, Urban Land Institute,</p> <p>19 Apartment Association of Greater</p> <p>20 Philadelphia.</p> <p>21 Q. Would you tell me your</p> <p>22 background and experience in this</p> <p>23 area? What have you done in the area</p> <p>24 of originating loans in your career</p>	<p>28</p> <p>1 Q. And what year did you –</p> <p>2 did you graduate from Penn State?</p> <p>3 A. Yes.</p> <p>4 Q. And what year was that?</p> <p>5 A. 1967.</p> <p>6 Q. Okay. And after graduating</p> <p>7 from Penn State what employment –</p> <p>8 what was your first full-time</p> <p>9 employment?</p> <p>10 A. I was a detail person for</p> <p>11 Merck Sharp & Dohme.</p> <p>12 Q. And what was your next</p> <p>13 employment? What was your next</p> <p>14 employer?</p> <p>15 A. Equitable Life Insurance.</p> <p>16 Q. And what did you do for</p> <p>17 them?</p> <p>18 A. Sold life insurance.</p> <p>19 Q. And what was your next</p> <p>20 employer?</p> <p>21 A. Charles Rollison & Company.</p> <p>22 Q. And what did you do for</p> <p>23 them? For it?</p> <p>24 A. Sold houses. Listed and</p>
<p>27</p> <p>1 other than employment by John</p> <p>2 Hancock?</p> <p>3 A. Are you talking about who</p> <p>4 else I've worked for?</p> <p>5 Q. Yes.</p> <p>6 A. Fidelity Bond & Mortgage.</p> <p>7 Q. Can you tell me when you</p> <p>8 worked for Fidelity Bond & Mortgage?</p> <p>9 A. Yes. 1988 to mid-1990.</p> <p>10 Q. Is that your first job in</p> <p>11 connection with originating loans?</p> <p>12 A. No.</p> <p>13 Q. Let's then do it</p> <p>14 chronologically.</p> <p>15 After you –</p> <p>16 A. I'm going backwards from</p> <p>17 Hancock.</p> <p>18 Q. Let's go forward for me.</p> <p>19 A. Okay.</p> <p>20 Q. It's easier.</p> <p>21 After you completed formal</p> <p>22 education where?</p> <p>23 A. University – or Penn State</p> <p>24 University.</p>	<p>29</p> <p>1 sold houses.</p> <p>2 Q. And after that?</p> <p>3 A. After that. Land Tech</p> <p>4 Corporation.</p> <p>5 Q. And what did you do for it?</p> <p>6 A. Sold industrial property.</p> <p>7 Q. And then what did you do?</p> <p>8 A. Korman Corporation.</p> <p>9 Q. What did you do for Korman?</p> <p>10 A. Sold industrial property.</p> <p>11 Q. And then what?</p> <p>12 A. Industrial and office</p> <p>13 property.</p> <p>14 Then Heritage Mortgage,</p> <p>15 where I started in mortgage banking.</p> <p>16 Q. Heritage Bank was –</p> <p>17 Heritage Mortgage was a mortgage</p> <p>18 bank?</p> <p>19 A. Yes. Mortgage banker.</p> <p>20 Q. Mortgage banker?</p> <p>21 A. Uh-huh.</p> <p>22 Q. And what did you do for</p> <p>23 Heritage?</p> <p>24 A. Originated commercial</p>



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<p style="text-align: center;">30</p> <p>1 loans.</p> <p>2 Q. Okay. And when was that,</p> <p>3 approximately?</p> <p>4 A. 1978.</p> <p>5 Q. And after Heritage, by whom</p> <p>6 were you employed?</p> <p>7 A. Central Mortgage.</p> <p>8 Q. And what did you do for</p> <p>9 Central?</p> <p>10 A. Originated commercial</p> <p>11 loans.</p> <p>12 Q. And approximately when was</p> <p>13 that?</p> <p>14 A. It was 1982, that I recall.</p> <p>15 Q. Why did you leave Heritage?</p> <p>16 A. The president of Heritage</p> <p>17 became the president of Central</p> <p>18 Mortgage.</p> <p>19 Q. Okay. And then what</p> <p>20 happened in terms of your employment?</p> <p>21 A. And Central Mortgage was</p> <p>22 acquired by Meritor Savings Bank.</p> <p>23 Q. Okay. And you went to work</p> <p>24 for Meritor?</p>	<p style="text-align: center;">32</p> <p>1 existed before I came with them.</p> <p>2 Q. Who did you replace?</p> <p>3 A. Pat Hollenbach.</p> <p>4 Q. So from 1990 to the present</p> <p>5 you've been manager of the regional</p> <p>6 office covering Pennsylvania, New</p> <p>7 Jersey, Delaware, and Puerto Rico?</p> <p>8 A. Yes.</p> <p>9 Q. In 2004 Manulife acquired</p> <p>10 John Hancock; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. What, if any, effect did</p> <p>13 that have on your duties and</p> <p>14 responsibilities?</p> <p>15 A. None.</p> <p>16 Q. What, if any, effect did</p> <p>17 that have on your person to whom you</p> <p>18 report?</p> <p>19 A. None.</p> <p>20 Q. What, if any, effect did it</p> <p>21 have on you at all?</p> <p>22 A. Well, a little</p> <p>23 disconcerting to have somebody else</p> <p>24 buy you. I guess psychologically a</p>
<p style="text-align: center;">31</p> <p>1 A. Yes.</p> <p>2 Q. And then what happened?</p> <p>3 A. Then I left Meritor to go</p> <p>4 with Fidelity Bond & Mortgage.</p> <p>5 Q. In 1988?</p> <p>6 A. 1988, yes.</p> <p>7 Q. And you originated</p> <p>8 commercial loans?</p> <p>9 A. Originated commercial</p> <p>10 loans, yes.</p> <p>11 Q. In 1990 you left Fidelity</p> <p>12 and joined John Hancock?</p> <p>13 A. Yes.</p> <p>14 Q. And what were your duties</p> <p>15 and responsibilities then when you</p> <p>16 first joined John Hancock?</p> <p>17 A. Pretty much the same as</p> <p>18 they are now.</p> <p>19 Q. Okay. Did you create the</p> <p>20 office or had the office existed</p> <p>21 before you –</p> <p>22 A. The John Hancock office?</p> <p>23 Q. Yes.</p> <p>24 A. The John Hancock office</p>	<p style="text-align: center;">33</p> <p>1 little feeling of uncertainty.</p> <p>2 Q. Any policies or procedures</p> <p>3 or methods of doing business that</p> <p>4 changed after the acquisition by</p> <p>5 Manulife?</p> <p>6 A. Yes.</p> <p>7 Q. Could you tell me what they</p> <p>8 are?</p> <p>9 A. Well, we went from a real</p> <p>10 estate committee process to a</p> <p>11 signature process.</p> <p>12 Q. And what does that mean?</p> <p>13 A. Prior to Manulife, loans</p> <p>14 were approved at a real estate</p> <p>15 committee.</p> <p>16 After Manulife they were</p> <p>17 approved by – they were indicated</p> <p>18 approved by signature authority up to</p> <p>19 the loan amount that that person was</p> <p>20 allowed to sign for.</p> <p>21 Q. Okay. What other changes?</p> <p>22 A. None that I can think of.</p> <p>23 Q. Were there any new or</p> <p>24 different criteria requirements for</p>



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<p>34</p> <p>1 loans after Manulife acquired John 2 Hancock? 3 A. Well -- how do I want to 4 say this? 5 Nothing in -- nothing 6 specifically that I can think of. 7 Q. All right. Are you 8 familiar with the 10 percent constant 9 requirement? 10 A. Yes. 11 Q. Did that requirement exist 12 in John Hancock when John Hancock -- 13 A. No. 14 Q. -- prior to acquisition? 15 A. No. 16 Q. And that -- 17 MR. DAVIS: Please let him 18 finish his questions before you begin 19 to answer. 20 THE WITNESS: Oh, okay. 21 All right. All right. 22 MR. SCHER: I was mumbling, 23 I apologize. I'll try not to 24 whisper.</p>	<p>36</p> <p>1 THE WITNESS: Okay. Can 2 you repeat the question, please. 3 MR. SCHER: Sure. 4 BY MR. SCHER: 5 Q. Was the 10 percent constant 6 criteria contained in the Avenel loan 7 application? 8 A. No. 9 Q. When did the 10 percent 10 constant criteria, when was that 11 introduced into the requirements for 12 a loan after the Manulife 13 acquisition? 14 A. Between the application and 15 the approval. 16 Q. How did you learn that the 17 new criteria, the 10 percent constant 18 criteria, was introduced? 19 A. Tim told me, Tim Malik. 20 Q. And how did he tell you 21 that? Do you remember? Was it an 22 E-mail or a telephone conversation? 23 A. As far as I can remember, 24 it was a phone call.</p>
<p>35</p> <p>1 BY MR. SCHER: 2 Q. Was that 10 percent 3 constant requirement introduced after 4 the acquisition by Manulife? 5 A. Yes. 6 Q. And was that criteria 7 reflected in the loan application at 8 the time Avenel completed its loan 9 application? 10 MR. DAVIS: Objection. 11 BY MR. SCHER: 12 Q. Was it contained in it? 13 MR. DAVIS: Objection. 14 MR. SCHER: Okay. 15 BY MR. SCHER: 16 Q. You can answer it anyway. 17 THE WITNESS: Is that -- is 18 that okay? 19 MR. SCHER: Yes. 20 MR. DAVIS: Yes. You can 21 answer. That's fine. 22 MR. SCHER: He'll say "I 23 instruct you not to answer" if he 24 doesn't want you to answer.</p>	<p>37</p> <p>1 Q. The application is dated 2 July 30, the approval is dated August 3 17, I believe. 4 Can you approximate with 5 any greater precision when that 6 approval -- when you learned the 10 7 percent constant had been introduced? 8 A. To clarify? 9 Q. Yes. 10 A. Can I ask a clarifying 11 question? 12 Q. Yes. 13 MR. DAVIS: You can ask. 14 MR. SCHER: You're entitled 15 to, yes. 16 THE WITNESS: For this 17 specific deal, you mean? 18 MR. SCHER: Yes. Yes. 19 THE WITNESS: Sometime 20 between July 30th and the approval 21 date. 22 MR. SCHER: Okay. 23 THE WITNESS: Yeah. 24 BY MR. SCHER:</p>



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<p style="text-align: center;">38</p> <p>1 Q. And what, if anything, did 2 you do after you learned that this 3 new criteria, the 10 percent 4 constant, had been introduced into 5 the approval process with respect to 6 the Avenel loan? What did you do? 7 A. Well, I complained to Tim. 8 Q. And do you recall the gist 9 of what you complained? 10 A. I complained that it 11 shouldn't be inserted now because it 12 wasn't in the original application. 13 Q. Okay. And what else did 14 you do? 15 A. I contacted the broker, Rob 16 Kelly. 17 Q. And what did you -- 18 A. And I told him, I think I 19 said there may be a potential 20 problem. 21 Q. Okay. And what else did 22 you do? 23 A. I think that's it. 24 Q. Did you undertake to modify</p>	<p style="text-align: center;">40</p> <p>1 part of the loan application; right? 2 A. Yes. 3 (Discussion off the 4 record.) 5 BY MR. SCHER: 6 Q. On August 11th, 2004, 7 according to your -- according to the 8 privilege log which has been produced 9 in this case -- you don't have to 10 know about that, but that's the 11 source of my information -- there's a 12 document that is marked PRIV 0042 13 through 0045. 14 And it's an E-mail with an 15 attachment and it's from Tim Malik 16 and it's to Nathaniel Margolis, 17 Esquire, with a carbon copy to you 18 and the subject is a draft amendment 19 to Vesterra loan application. 20 Knowing that, does that 21 refresh your recollection as to 22 whether there was a draft amendment 23 to the Vesterra loan application at 24 or about August 11th, 2004?</p>
<p style="text-align: center;">39</p> <p>1 the loan application to reflect this 2 new criteria? 3 A. No. 4 Q. Did you participate in any 5 efforts to modify the loan 6 application to reflect the new 7 criteria? 8 A. I believe we -- we -- Tim 9 sent me a new exhibit, new Exhibit 1, 10 which was subsequently eliminated. 11 Q. And he sent you a new 12 Exhibit 1 which had new numbers on 13 it, I take it? 14 A. Right. It had the -- it 15 referenced the 10 percent constant. 16 Q. And it showed the 10 17 percent constant. 18 A. Right. 19 Q. And then you said it was 20 eliminated. What do you mean by 21 that? 22 A. I mean it was not part of 23 the final approval. 24 Q. Okay. So it was not made</p>	<p style="text-align: center;">41</p> <p>1 A. I don't remember. 2 Q. On August 11th also, a 3 document marked PRIV 0046-0051, 4 there's an E-mail with an attachment 5 from Tim Malik to you and it 6 forward -- it is described as 7 forwarding draft amendment to 8 Vesterra loan application with 9 attorney comments. 10 Do you have any 11 recollection of receiving a draft 12 amendment to Vesterra loan 13 application? 14 A. No. 15 Q. Did you ever see a version 16 of the Vesterra loan application 17 which contained the 10 percent 18 constant, a version that was 19 unsigned? 20 A. I saw an Exhibit 1. 21 Q. Just that Exhibit 1 that 22 you made reference to in your earlier 23 testimony? 24 A. Right. Yes.</p>



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<p style="text-align: center;">42</p> <p>1 Q. After you learned that 2 the -- this 10 percent constant 3 criteria had been introduced and -- 4 into the approval process, did you 5 learn that the loan had in fact been 6 approved? 7 MR. DAVIS: Objection. 8 You can respond. 9 BY MR. SCHER: 10 Q. Did you learn that the loan 11 to Avenel had been approved? 12 A. Before the 10 percent 13 constant or after the 10 percent? 14 Q. After the 10 percent 15 constant. 16 A. The 10 percent constant was 17 introduced, I vehemently objected, it 18 was subsequently eliminated, then the 19 loan was approved. 20 Q. How do you know that the -- 21 that it was eliminated? 22 A. Because it's not part of 23 the executed application. 24 Q. Okay. Have you ever seen</p>	<p style="text-align: center;">44</p> <p>1 have for closing the loan? 2 A. A member of my staff 3 coordinates the legal and the 4 business items, orders third-party 5 reports. 6 Q. Who is responsible for 7 obtaining the funds that are used to 8 close the loan? How are the funds 9 obtained? 10 A. I don't understand. 11 Q. Well, on the eve of 12 closing, we're approaching a closing, 13 the person on your staff has 14 coordinated with legal with respect 15 to the preparation of documents and 16 so forth, scheduled and arranged for 17 the borrower and whatever signatures 18 are necessary. 19 How is the money arranged 20 for? 21 A. A loan disbursement is 22 executed by the borrower. The money 23 is wire-transferred from Boston 24 generally to a title company.</p>
<p style="text-align: center;">43</p> <p>1 the loan approval? 2 A. Yes. 3 Q. And are you a recipient of 4 that loan approval document? 5 A. Not officially. 6 Q. How did you come to get a 7 copy of that loan approval document? 8 A. I believe Tim sent it to 9 me. 10 Q. And in that loan approval 11 document the 10 percent constant does 12 appear, am I right? 13 A. I don't know. 14 Q. You didn't look at it 15 that -- 16 A. I don't remember. I don't 17 remember. 18 Q. Okay. After the loan 19 approval, what role do you have in 20 connection with the loan? 21 A. Closing the loan. My 22 office. 23 Q. And what -- by what do 24 you -- what responsibilities do you</p>	<p style="text-align: center;">45</p> <p>1 Q. After the borrower prepares 2 this loan disbursement document -- 3 what is the loan disbursement 4 document? What does that say? What 5 he's going to do with the proceeds? 6 A. Yes. Yes. 7 Q. That loan disbursement 8 document, then what happens to it? 9 Where does it go? 10 A. It goes to the closing 11 attorney. 12 Q. Okay. 13 A. In this case it would have 14 been -- 15 Q. White and Williams? 16 A. -- Tom Rogers -- 17 Q. Tom Rogers. 18 A. -- White and Williams. 19 Q. Right. 20 And then where does it go? 21 A. Tom Rogers makes sure that 22 everything is in order, all the 23 documents have been signed, all the 24 business items have been adhered to,</p>



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<p style="text-align: center;">46</p> <p>1 and he notifies Boston that all is 2 good to go. 3 Q. And what happens in Boston? 4 A. Money gets put on the wire. 5 Q. Do you know to whom the 6 Boston -- who in Boston is notified 7 by Mr. Rogers? 8 A. Tim Malik. 9 Q. And do you know who Mr. 10 Malik informs to put it on the wire? 11 A. No. 12 Q. And do you know what 13 process is employed by Mr. Malik to 14 have the money put on the wire? 15 A. He informs the Treasury 16 Department. 17 Q. Do you know how he informs 18 the Treasury Department? 19 A. No. 20 Q. Do you know what forms are 21 used to instruct the Treasury 22 Department to put the money on the 23 wire? 24 A. No.</p>	<p style="text-align: center;">48</p> <p>1 THE WITNESS: I don't know. 2 BY MR. SCHER: 3 Q. You would defer to Mr. 4 Malik on that subject? 5 A. Yes. 6 (Discussion off the 7 record.) 8 BY MR. SCHER: 9 Q. By the way, I've failed to 10 tell you that any time you want to 11 take a break, we can take a break, so 12 whatever is convenient for you. 13 A. Fine. Thanks. 14 Q. There is a criteria called 15 the loan sizing criteria. 16 Have you ever heard of 17 that? 18 A. Yes. 19 Q. And what is that -- is that 20 a John Hancock or a Manulife 21 criteria? 22 A. It's both. 23 Q. Okay. So the loan sizing 24 criteria existed prior to the</p>
<p style="text-align: center;">47</p> <p>1 Q. Do you know what documents 2 are -- what documents relating to the 3 loan itself are used to instruct the 4 treasury to make the disbursement? 5 A. Again, I don't -- I don't 6 follow the -- 7 Q. Okay. Let me clarify it. 8 Do you know whether the 9 loan application document or the loan 10 approval document is used in 11 connection with the instructions to 12 the treasurer to disburse? 13 A. No. 14 Q. So you don't know whether 15 the 10 percent constant requirement 16 was or was not contained in the 17 instructions to treasury with respect 18 to the disbursement of the loan -- 19 MR. DAVIS: Objection. 20 BY MR. SCHER: 21 Q. -- would be contained. 22 MR. DAVIS: Objection. 23 Calls for speculation. 24 You can respond.</p>	<p style="text-align: center;">49</p> <p>1 acquisition by Manulife? 2 A. Yes. 3 Q. And what is that loan 4 sizing criteria? Can you articulate 5 it? 6 A. Then? Now? It changes, 7 depending on market. 8 Q. Okay. Well, then could you 9 describe to me how it -- what it is 10 and then how it changes, depending on 11 market? 12 A. Prior to Manulife, it was a 13 constant, arbitrary constant -- I 14 wouldn't say arbitrary. It was a 15 Fitch constant used by one of the 16 rating agencies. 17 Q. Fitch is a rating agency? 18 A. Is a rating agency, yeah. 19 Q. Yes. And what was that? 20 A. To determine at the end -- 21 at the maturity of a loan whether the 22 debt service coverage would be equal 23 to 1.0 using a Fitch constant. 24 Q. Is that the letter</p>



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<p style="text-align: center;">50</p> <p>1 combination, a Fitch rating?</p> <p>2 No. It's not a quality of</p> <p>3 the loan, it's --</p> <p>4 A. No. It's an actual number.</p> <p>5 Q. Okay.</p> <p>6 A. It's a factor.</p> <p>7 Q. And the computation of the</p> <p>8 Fitch rating is -- the calculation is</p> <p>9 accomplished through some internal</p> <p>10 underwriting process?</p> <p>11 A. The -- yes. Yes. The</p> <p>12 Fitch constant times the loan</p> <p>13 proceeds at the maturity of the</p> <p>14 loan --</p> <p>15 Q. Okay.</p> <p>16 A. -- equals what the assumed</p> <p>17 debt service would be at that time.</p> <p>18 Q. And how did that change?</p> <p>19 A. It went down. Started --</p> <p>20 originally was, for many years,</p> <p>21 10.54, then it went to 10, and right</p> <p>22 now it's at 9.</p> <p>23 Now, the Fitch constant is</p> <p>24 10 -- was at 10.54. Hancock and</p>	<p style="text-align: center;">52</p> <p>1 by Manulife and that there were</p> <p>2 changes depending on market; right?</p> <p>3 A. They --</p> <p>4 MR. DAVIS: Objection.</p> <p>5 You can respond.</p> <p>6 THE WITNESS: Okay.</p> <p>7 They've been adjusted based on</p> <p>8 competitive market conditions. Yes.</p> <p>9 MR. SCHER: Okay.</p> <p>10 BY MR. SCHER:</p> <p>11 Q. Is the loan sizing criteria</p> <p>12 contained in the loan application?</p> <p>13 A. Specifically Avenel?</p> <p>14 Q. Yes.</p> <p>15 A. No.</p> <p>16 Actually, not contained in</p> <p>17 any of them.</p> <p>18 Q. They're not contained in</p> <p>19 any of the loan applications?</p> <p>20 A. Yes. Because it's only an</p> <p>21 indicator, it's not a -- it's not an</p> <p>22 absolute fact of life.</p> <p>23 Q. Okay. When you say "an</p> <p>24 indicator, not an absolute fact of</p>
<p style="text-align: center;">51</p> <p>1 Manulife subsequently adjusted it</p> <p>2 downwards to cope with competitive</p> <p>3 market conditions.</p> <p>4 Q. So in order to qualify</p> <p>5 loans, loan applications, they</p> <p>6 reduced the Fitch constant from 10.54</p> <p>7 to 10 and now to 9?</p> <p>8 A. Yes.</p> <p>9 Q. So when you said</p> <p>10 pre-Manulife, you were referring to</p> <p>11 the fact that pre-Manulife it was</p> <p>12 10.54 and then subsequently it was</p> <p>13 reduced; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. And you were explaining to</p> <p>16 me the changes that related to</p> <p>17 marketing -- market conditions and</p> <p>18 you have answered that part of the</p> <p>19 question as well, haven't you?</p> <p>20 MR. DAVIS: Objection.</p> <p>21 BY MR. SCHER:</p> <p>22 Q. You said that the changes</p> <p>23 were -- that the loan sizing criteria</p> <p>24 had existed prior to the acquisition</p>	<p style="text-align: center;">53</p> <p>1 life," that means that this -- the</p> <p>2 loan sizing criteria simply indicates</p> <p>3 the amount of the loan, but it's not</p> <p>4 an absolute requirement for the size</p> <p>5 of the loan; is that right?</p> <p>6 A. No. There are --</p> <p>7 MR. DAVIS: You can</p> <p>8 respond.</p> <p>9 THE WITNESS: There are</p> <p>10 several underwriting criteria, one of</p> <p>11 which is the loan sizing. The loan</p> <p>12 sizing criteria can be waived pending</p> <p>13 other attributes in the deal.</p> <p>14 MR. SCHER: Okay.</p> <p>15 BY MR. SCHER:</p> <p>16 Q. What are the other</p> <p>17 criteria?</p> <p>18 A. Well, loan to value.</p> <p>19 Q. That's called LTV?</p> <p>20 A. Yes.</p> <p>21 Debt service coverage.</p> <p>22 Q. DSCR?</p> <p>23 A. DSC.</p> <p>24 Q. DSC?</p>



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<p style="text-align: center;">54</p> <p>1 A. Actually put the ratio in 2 there, it would be a DSC, DSCR, yes. 3 Q. Okay. Any other? 4 A. They're the major ones. 5 Q. Okay. And the LTV, or loan 6 to value, and the DSC are contained 7 in the loan application; right? 8 A. Yes. 9 Q. And the specific ratios 10 that are required are contained in 11 the loan application; right? 12 A. Yes. Yes. 13 Q. And the borrower signs a 14 loan application containing those two 15 criteria and the numbers associated 16 with them; right? 17 A. Yes. 18 MR. DAVIS: Please pause 19 before you respond. 20 THE WITNESS: Okay. 21 BY MR. SCHER: 22 Q. And in the Avenel case the 23 loan-to-value criteria and the debt 24 service coverage or debt service</p>	<p style="text-align: center;">56</p> <p>1 Q. In your dealings with 2 Messrs. Koller, Kelly, and Palopoli, 3 have you found them to be honest, 4 trustworthy people? 5 A. Yes. 6 Q. And in connection with your 7 work in this case, from the time that 8 the dispute arose, what role have you 9 played in connection with this 10 dispute? 11 In other words, after the 12 decision was made to institute a 13 lawsuit and collect the fees and 14 the -- from the Letter of Credit, 15 what role have you played? 16 MR. DAVIS: Objection. 17 You're asking since -- 18 MR. SCHER: The lawsuit. 19 MR. DAVIS: -- the loan 20 didn't close and a decision was made 21 to institute a lawsuit, what role has 22 he played? 23 BY MR. SCHER: 24 Q. What have you done? Right.</p>
<p style="text-align: center;">55</p> <p>1 coverage ratio were contained in the 2 application and the borrower signed 3 an application containing those two 4 criteria; right? 5 MR. DAVIS: Objection. 6 You can respond. 7 THE WITNESS: Yes. 8 BY MR. SCHER: 9 Q. And the loan sizing 10 criteria was not contained in the 11 loan application by the borrower in 12 the Avenel deal; right? 13 MR. DAVIS: You can 14 respond. 15 THE WITNESS: Yes. 16 BY MR. SCHER: 17 Q. And the 10 percent constant 18 was not contained in the loan 19 application in the Avenel deal; 20 right? 21 MR. DAVIS: Objection. 22 You can respond. 23 THE WITNESS: Yes. 24 BY MR. SCHER:</p>	<p style="text-align: center;">57</p> <p>1 A. Nothing. 2 Q. Have you collected 3 documents -- 4 A. Yes. 5 Q. -- to produce in this case? 6 A. Yes. 7 Q. And what did your document 8 collection process entail? How did 9 you do that? 10 A. Notifying everybody in my 11 office to produce whatever notes they 12 had, copying all the documents in our 13 file, checking our E-mails, Outlook, 14 anything that had to do with Avenel. 15 Q. And did you produce those 16 documents to your counsel? 17 A. Yes. 18 Q. How were you informed to do 19 that collection, that process of 20 collecting documents? 21 MR. DAVIS: Objection. 22 Are you asking about his 23 communications with counsel on the 24 topic?</p>



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<p style="text-align: center;">58</p> <p>1 MR. SCHER: I just --</p> <p>2 BY MR. SCHER:</p> <p>3 Q. How was the communication</p> <p>4 made to you?</p> <p>5 MR. DAVIS: You can tell</p> <p>6 him from whom you received your</p> <p>7 communications in that regard.</p> <p>8 THE WITNESS: I received it</p> <p>9 from Lisa Gaulin at Mr. Davis's</p> <p>10 office.</p> <p>11 MR. SCHER: Okay.</p> <p>12 BY MR. SCHER:</p> <p>13 Q. Can you tell me when the --</p> <p>14 well, how the first notion of the</p> <p>15 Avenel deal came to your attention?</p> <p>16 In other words, when did</p> <p>17 you first learn about or how did you</p> <p>18 first learn about the possibility of</p> <p>19 what eventually became the loan</p> <p>20 application on the Avenel</p> <p>21 transaction?</p> <p>22 A. My associate, Brian</p> <p>23 Depolis, had been talking with Joe</p> <p>24 Kelly for a while, and he brought it</p>	<p style="text-align: center;">60</p> <p>1 Q. Okay.</p> <p>2 A. So my contact was with Rob</p> <p>3 from that point on.</p> <p>4 Q. So when he approached you</p> <p>5 with the loan, what did he tell you</p> <p>6 about it? Do you have any</p> <p>7 recollection? What did he provide to</p> <p>8 you?</p> <p>9 A. He gave me a pro forma with</p> <p>10 a description of the completed</p> <p>11 project.</p> <p>12 Q. And he had that -- was that</p> <p>13 pro forma prepared for John Hancock</p> <p>14 or was it a generalized pro forma</p> <p>15 that was prepared for whatever source</p> <p>16 of borrowing they could obtain?</p> <p>17 MR. DAVIS: Objection.</p> <p>18 BY MR. SCHER:</p> <p>19 Q. If you know.</p> <p>20 A. I don't recall.</p> <p>21 Q. And then what did you do?</p> <p>22 What, if anything, did you do after</p> <p>23 you had this contact with Rob Kelly</p> <p>24 where he turned over the pro forma?</p>
<p style="text-align: center;">59</p> <p>1 to my attention.</p> <p>2 Q. What did you learn from</p> <p>3 Brian Depolis?</p> <p>4 A. That they were building</p> <p>5 a -- an apartment complex.</p> <p>6 Q. What else?</p> <p>7 A. It was a potential loan</p> <p>8 opportunity.</p> <p>9 Q. Did Brian tell you that</p> <p>10 they had a construction loan already?</p> <p>11 A. I don't recall.</p> <p>12 Q. What happened next in the</p> <p>13 process?</p> <p>14 A. Subsequent to that, Rob</p> <p>15 Kelly, a mortgage broker, approached</p> <p>16 me with the transaction.</p> <p>17 Q. And when you say</p> <p>18 "approached me with a transaction,"</p> <p>19 what does that mean? What did that</p> <p>20 mean?</p> <p>21 A. To me it meant that since</p> <p>22 Rob and Joe were related, that Rob</p> <p>23 probably had the inside track on</p> <p>24 placing the mortgage.</p>	<p style="text-align: center;">61</p> <p>1 A. As best as I can remember,</p> <p>2 I initiated contact with Joe Kelly</p> <p>3 and Jim Koller.</p> <p>4 Q. When you say "initiated</p> <p>5 contact," what did you do? Call</p> <p>6 them? Write them?</p> <p>7 A. I believe Rob set up a</p> <p>8 meeting.</p> <p>9 Q. And so you did have a</p> <p>10 meeting with them?</p> <p>11 A. Yes.</p> <p>12 Q. And what happened at the</p> <p>13 meeting?</p> <p>14 A. I tried to present Hancock</p> <p>15 in its most favorable light in order</p> <p>16 to generate a favorable decision to</p> <p>17 proceed with our loan application.</p> <p>18 Q. And how did you go about</p> <p>19 doing that?</p> <p>20 A. Smile.</p> <p>21 Q. Okay. I haven't seen that</p> <p>22 yet, so I just wanted to know.</p> <p>23 Did you have materials</p> <p>24 about John Hancock with you when you</p>



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<p style="text-align: center;">62</p> <p>1 made this presentation?</p> <p>2 A. I don't remember.</p> <p>3 Q. Did you understand that you</p> <p>4 were in a competitive situation; that</p> <p>5 is, that there were other lenders</p> <p>6 available?</p> <p>7 A. Oh -- very much.</p> <p>8 Q. Did you know who those</p> <p>9 other potential sources were?</p> <p>10 A. Not specifically.</p> <p>11 Q. Did you ever learn who</p> <p>12 those other sources were?</p> <p>13 A. Yes.</p> <p>14 Q. And how did you learn who</p> <p>15 the other sources were?</p> <p>16 A. I think Rob told me.</p> <p>17 Q. And who were the other</p> <p>18 sources?</p> <p>19 A. I believe it was GMAC.</p> <p>20 Q. Do you know what GMAC's</p> <p>21 practices and procedures are with</p> <p>22 respect to loan applications?</p> <p>23 A. No.</p> <p>24 Q. Do you know whether they</p>	<p style="text-align: center;">64</p> <p>1 loan closing.</p> <p>2 Q. Okay. What else? What</p> <p>3 other items?</p> <p>4 A. They wanted to have a -- on</p> <p>5 our forward program we typically have</p> <p>6 a three-month extension. They wanted</p> <p>7 a six-month extension.</p> <p>8 Q. So that it would take the</p> <p>9 loan 18 months out?</p> <p>10 A. Yes.</p> <p>11 Q. And what else?</p> <p>12 A. They wanted to have the --</p> <p>13 it was a ten-year loan. They wanted</p> <p>14 to have the loan open to prepayment</p> <p>15 in the tenth year, which I priced it</p> <p>16 and found it was not economical.</p> <p>17 So we offered a -- an</p> <p>18 eleventh year option, open in the</p> <p>19 eleventh year, at, you know, whatever</p> <p>20 the rate would be.</p> <p>21 Q. And what else? What other</p> <p>22 items?</p> <p>23 A. The borrower wanted to</p> <p>24 limit their exposure under I think</p>
<p style="text-align: center;">63</p> <p>1 require the payment of application --</p> <p>2 processing application and commitment</p> <p>3 fees?</p> <p>4 A. No.</p> <p>5 Q. Do you know whether they</p> <p>6 have criteria -- what their criteria</p> <p>7 are for making loans?</p> <p>8 A. No.</p> <p>9 Q. So how did you make your</p> <p>10 case for John Hancock? What did you</p> <p>11 say?</p> <p>12 A. Well, the borrower wanted</p> <p>13 specific items in the application and</p> <p>14 we attempted -- we, Hancock --</p> <p>15 attempted to solve their requests.</p> <p>16 Q. And do you remember what</p> <p>17 those items were?</p> <p>18 A. Well, one, they wanted a</p> <p>19 forward -- a one-year forward.</p> <p>20 Q. Okay. So they wanted a</p> <p>21 loan commitment from Hancock that</p> <p>22 would not close for a year.</p> <p>23 A. Right. They wanted to lock</p> <p>24 the rate one year in advance of the</p>	<p style="text-align: center;">65</p> <p>1 it's Paragraph 30 of the loan</p> <p>2 application to the 3 percent that</p> <p>3 they had put up plus another 2</p> <p>4 percent.</p> <p>5 Q. Exposure against what</p> <p>6 contingency?</p> <p>7 A. Against Hancock's losses.</p> <p>8 Q. Okay.</p> <p>9 A. Whatever. Whatever the</p> <p>10 language is on that paragraph.</p> <p>11 Q. Right. And what --</p> <p>12 A. So it would be a total of 5</p> <p>13 percent.</p> <p>14 And we ran it up the</p> <p>15 flagpole and that -- we couldn't do</p> <p>16 that.</p> <p>17 Q. And you informed them of</p> <p>18 that --</p> <p>19 A. Yes.</p> <p>20 Q. -- in writing; am I right?</p> <p>21 A. Informed them in writing?</p> <p>22 Q. You informed them that you</p> <p>23 couldn't do that in an E-mail?</p> <p>24 A. Jeez, I don't -- I don't</p>



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<p>66</p> <p>1 know if I did or not. 2 Q. Okay. What other items? 3 A. Nothing that I remember 4 without looking at the -- at the 5 application and the supplement 6 itself. 7 Q. Okay. And did you learn 8 that the -- that your smiling had a 9 positive effect on the decision by 10 the Avenel developers? 11 A. Yes. 12 Q. Right on the spot or did 13 they let you know later? 14 A. No. It was a -- it was a 15 prolonged negotiation. 16 Q. Okay. Did you have a 17 meeting subsequent to this first 18 meeting? 19 A. Yes. 20 Q. Yes? 21 Can you recall anything 22 about any of the subsequent meetings 23 between the time of your first 24 meeting and the time the loan</p>	<p>68</p> <p>1 occasionally went over, just stopped 2 in and, you know, said hello. 3 BY MR. SCHER: 4 Q. And said hello. 5 After the loan approval had 6 been made by John Hancock on about 7 August 17th, did you communicate that 8 to the borrowers, prospective 9 borrowers? 10 A. Yes. 11 Q. And how did you do that? 12 Do you recall? 13 A. Not specifically. What I 14 normally do is they send from Boston 15 the approved document. I give it to 16 Helene, who then sends it off to the 17 borrower along with our checklist. 18 Q. And that approved document 19 was the loan application itself 20 signed by the people at -- 21 A. Officer of Hancock. 22 Q. -- John Hancock? 23 And from that time forward, 24 the next activities were in</p>
<p>67</p> <p>1 application was prepared and 2 submitted on July 30, 2004? 3 A. No. 4 Q. Can you approximate the 5 amount of time between your 6 original -- your initial smiling 7 presentation and the time that the 8 loan application was completed and 9 submitted? Weeks? 10 A. I would say within a couple 11 of weeks. 12 Q. After the loan application 13 was submitted, with the exception of 14 your communication with Rob Kelly 15 regarding the bump in the road that 16 had arisen, did you have any other 17 contact -- any contact with the 18 borrowers after the loan application 19 was submitted? 20 MR. DAVIS: Objection. 21 THE WITNESS: I can't 22 remember specifically, but their 23 offices were, you know, a -- a short 24 walk away at the time, so I</p>	<p>69</p> <p>1 connection with the planning toward 2 the closing of the loan; is that 3 right? 4 A. The next activity would be 5 to put a tickler on it sometime -- so 6 that sometime around the beginning of 7 2005 we'd start to coordinate the 8 third party's appraisals, et cetera. 9 Q. How did you first learn 10 that the loan was not going to close? 11 A. Either Jim or Joe called 12 me, told me they wanted to get 13 together. 14 Q. And you did get together 15 with them? 16 A. Yes. 17 Q. And can you tell me when 18 that was, approximately? 19 A. Sometime in the spring, 20 between the spring and summer of 21 2005. 22 Q. And where did that meeting 23 occur? 24 A. I can't recall</p>



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<p style="text-align: center;">70</p> <p>1 specifically.</p> <p>2 Q. And what was the gist of</p> <p>3 the meeting?</p> <p>4 A. Gist of the meeting was</p> <p>5 that Jim said that he wanted to be up</p> <p>6 front and tell me that they had heard</p> <p>7 that apartments were commanding</p> <p>8 exorbitant prices, and if it were</p> <p>9 true, they were going to explore the</p> <p>10 market or -- to find out whether or</p> <p>11 not it was true.</p> <p>12 And recognizing he still</p> <p>13 had obligations to Hancock, he just</p> <p>14 wanted to be up front and tell me</p> <p>15 that this is what they were doing.</p> <p>16 Q. And what, if anything, did</p> <p>17 you say?</p> <p>18 A. I said, "Jim, it's a</p> <p>19 business decision."</p> <p>20 Q. What did you do with that</p> <p>21 information?</p> <p>22 A. I relayed it to Tim.</p> <p>23 Q. And then what happened?</p> <p>24 What happened internally at John</p>	<p style="text-align: center;">72</p> <p>1 MR. DAVIS: You can answer</p> <p>2 that.</p> <p>3 BY MR. SCHER:</p> <p>4 Q. And if it's counsel, you</p> <p>5 should tell me that.</p> <p>6 A. Tim Malik.</p> <p>7 Q. Tim Malik, okay.</p> <p>8 What did Mr. Malik tell</p> <p>9 you?</p> <p>10 MR. DAVIS: Again, the same</p> <p>11 instruction, that to the extent that</p> <p>12 Mr. Malik told you things that were</p> <p>13 conveyed to him by counsel --</p> <p>14 THE WITNESS: Uh-huh.</p> <p>15 MR. DAVIS: -- you should</p> <p>16 exclude that from your response. And</p> <p>17 if you can't exclude it from your</p> <p>18 response, then you should decline to</p> <p>19 answer the question. I don't want</p> <p>20 you to disclose any communications</p> <p>21 with counsel.</p> <p>22 THE WITNESS: Well, I did</p> <p>23 send an E-mail to Jim reciting what</p> <p>24 Tim had sent to me.</p>
<p style="text-align: center;">71</p> <p>1 Hancock, as far as you know, after</p> <p>2 you relayed it to Tim?</p> <p>3 A. Nothing I know of.</p> <p>4 Q. Did you ever get word back</p> <p>5 from John Hancock about their</p> <p>6 reaction to this notion that Mr.</p> <p>7 Koller advanced?</p> <p>8 MR. DAVIS: Objection.</p> <p>9 Again, I'll just caution</p> <p>10 you here that to the extent that</p> <p>11 there was feedback that included</p> <p>12 communications with counsel, advice</p> <p>13 of counsel or the like, you should</p> <p>14 not disclose it in response to Mr.</p> <p>15 Scher's question.</p> <p>16 BY MR. SCHER:</p> <p>17 Q. So the question is, did you</p> <p>18 ever get word back from John Hancock</p> <p>19 about their reaction to the notion</p> <p>20 that Jim, Mr. Koller, had advanced?</p> <p>21 And you can answer that yes or no.</p> <p>22 A. Yes.</p> <p>23 Q. And then who conveyed word</p> <p>24 back to you?</p>	<p style="text-align: center;">73</p> <p>1 MR. SCHER: Okay.</p> <p>2 BY MR. SCHER:</p> <p>3 Q. And that's the E-mail where</p> <p>4 you list the items that -- of damage</p> <p>5 that you were going to claim; is that</p> <p>6 right?</p> <p>7 MR. DAVIS: You can respond</p> <p>8 to that.</p> <p>9 THE WITNESS: Yes.</p> <p>10 MR. SCHER: Okay.</p> <p>11 BY MR. SCHER:</p> <p>12 Q. And that's approximately</p> <p>13 when you got word back from John</p> <p>14 Hancock as to the idea advanced by</p> <p>15 Mr. Koller, right?</p> <p>16 A. No. Mr. Koller didn't</p> <p>17 advance any idea. He just told me</p> <p>18 that he was going to explore.</p> <p>19 Q. A sale.</p> <p>20 A. A sale, right.</p> <p>21 Q. Okay. Do you know who</p> <p>22 participated in the decision Mr.</p> <p>23 Malik conveyed to you in which you in</p> <p>24 turn conveyed to Mr. Koller?</p>



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<p style="text-align: center;">74</p> <p>1 MR. DAVIS: Objection. 2 THE WITNESS: No. 3 MR. SCHER: No. 4 MR. DAVIS: If we could 5 take a break at some point. 6 MR. SCHER: Sure. Now is 7 fine. 8 MR. DAVIS: Okay. 9 (Recess, 10:50-10:58 a.m.) 10 BY MR. SCHER: 11 Q. You testified earlier that 12 the 10 percent constant criteria was 13 objected to by you; is that right? 14 You objected to that. 15 A. I objected to having it. 16 Yes. 17 Q. And you testified that it 18 was not contained in the loan 19 application; right? 20 A. The original -- yes. 21 Exactly. 22 Q. And you testified that you 23 understood that that requirement had 24 been eliminated; am I right about</p>	<p style="text-align: center;">76</p> <p>1 by the borrower and approved by 2 Hancock, so we were prepared to honor 3 our commitment. 4 BY MR. SCHER: 5 Q. And that's the basis for 6 it; right? 7 A. Yes. 8 Q. Did anyone ever tell you 9 from John Hancock internally that 10 that criteria had been eliminated? 11 Did anybody tell you separate and 12 apart from the fact that the loan 13 application was signed by John 14 Hancock? 15 A. No. 16 Q. Did Malik say, well, your 17 objection has been sustained; that 18 is, the loan criteria has now -- the 19 loan criteria has now -- the criteria 20 required has now been reduced to only 21 those which are contained in the loan 22 application and this 10 percent 23 constant is no longer in the mix? 24 A. He signed the --</p>
<p style="text-align: center;">75</p> <p>1 that? 2 A. Yes. 3 Q. And could you tell me the 4 basis for that belief, that it was 5 eliminated? 6 A. That we committed on the 7 loan without the 10 percent constant. 8 Q. And that's because the loan 9 application doesn't contain the 10 10 percent constant and it was signed by 11 John Hancock? 12 MR. DAVIS: Sorry. Would 13 you read back the question. 14 BY MR. SCHER: 15 Q. Could you tell me the basis 16 for your belief that it was 17 eliminated? 18 MR. DAVIS: And I thought 19 there was a question subsequent to 20 that, but go ahead. 21 All right. You can 22 respond. 23 THE WITNESS: The 24 application was executed without it</p>	<p style="text-align: center;">77</p> <p>1 MR. DAVIS: Objection. 2 You can respond. 3 THE WITNESS: Oh. Excuse 4 me. 5 BY MR. SCHER: 6 Q. Did he ever tell you that? 7 MR. DAVIS: Objection. 8 THE WITNESS: He signed the 9 commitment. 10 BY MR. SCHER: 11 Q. Other than the signing of 12 the commitment. 13 A. No. 14 Q. Okay. You described for me 15 in general terms what duties and 16 responsibilities you and your office 17 have with respect to closing and 18 that's the subject of my next 19 question to you. 20 In connection with the 21 closing, do you have any 22 responsibility for reviewing the 23 then-current financial condition of 24 the borrower with respect to rent</p>



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<p style="text-align: center;">78</p> <p>1 levels, net operating income, debt 2 service coverage, loan to value? 3 A. Prior to closing? 4 Q. Yes. 5 A. Yes. 6 Q. Who does that? 7 A. I would do it. 8 Q. And what is that process? 9 A. Well, the commitment 10 outlines certain criteria. We had an 11 exhibit outlining those criteria. 12 And I would make sure that the -- 13 when we close the loan that the 14 current levels of income were within 15 those criteria. 16 Q. And what do you literally 17 do? Do you fill out a form? Do you 18 write okay on it? Do you -- you 19 know, what literally do you -- how do 20 you accomplish that function? 21 A. Take a current rent roll, 22 add it up, deduct the expenses, 23 determine what the level of net 24 operating income was.</p>	<p style="text-align: center;">80</p> <p>1 that is, \$32 million, was important 2 to them; am I right? 3 A. Yes. 4 Q. You knew that there was 5 competition from at least GMAC at \$33 6 million; right? 7 A. At that time I'm not sure I 8 knew what the competition dollar 9 amount was. I certainly knew there 10 was competition. 11 Q. But in any event, you knew 12 that the size of the loan was 13 important to the borrowers? 14 A. Yes. 15 Q. They wanted 32 million; 16 right? 17 A. Yes. 18 Q. Again, this 10 percent 19 constant, you never discussed that 10 20 percent constant criteria or raised 21 it or referenced it with Jim, Joe, or 22 Frank, Mr. Koller, Mr. Kelly, or Mr. 23 Palopoli; am I right about that? 24 MR. DAVIS: Objection.</p>
<p style="text-align: center;">79</p> <p>1 Q. And that's it. 2 A. Uh-huh. 3 Q. Yes? 4 A. Yes. 5 Q. How do you communicate that 6 the rent roll, net operating income, 7 whatever are within -- are in 8 conformity with the criteria of John 9 Hancock as set forth in the loan 10 application? 11 A. There's an Affidavit -- 12 well, actually, there's an exhibit on 13 the application, commitment, which 14 has to be signed by me. 15 Q. And once you've signed that 16 Affidavit and then you've dispatched 17 your responsibilities with respect to 18 evaluating the loan at the time that 19 the closing is to occur? 20 A. Yes. 21 Q. Okay. You knew that at the 22 time you were smiling at your initial 23 meeting with the prospective 24 borrowers that the size of the loan,</p>	<p style="text-align: center;">81</p> <p>1 MR. SCHER: What's the 2 basis? 3 MR. DAVIS: I think that 4 mischaracterizes the record. I think 5 he already said he talked to Rob 6 Kelly about it and that Mr. Kelly, I 7 think, was their representative. 8 MR. SCHER: Okay. 9 MR. DAVIS: But you can 10 respond. 11 MR. SCHER: All right. 12 BY MR. SCHER: 13 Q. Other than the one 14 communication you had with Rob Kelly, 15 did you have any other communications 16 on the subject of the 10 percent 17 constant? 18 A. I don't recall. 19 Q. Can you recall any 20 conversations with Mr. Koller on the 21 subject of the 10 percent constant? 22 A. I don't recall. 23 Q. Any conversations with Mr. 24 Joe Kelly on the subject of the 10</p>



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1 percent constant?
2 A. I don't recall.
3 Q. And any conversations with
4 Mr. Frank Palopoli on the 10 percent
5 constant?
6 A. Definitely not Frank.
7 Q. Okay. In connection with
8 your communication with Rob Kelly,
9 did that communication take the form
10 of anything other than the E-mail you
11 sent to Rob Kelly? In other words,
12 did you call him besides E-mail him?
13 A. Well, I called him.
14 Q. You called him.
15 A. Called Rob Kelly, yes.
16 Q. What did you tell him?
17 A. Paraphrasing, that there
18 may be a potential problem. We had
19 a new underwriting criteria and we'd
20 like to insert the 10 percent
21 constant.
22 Q. And did you tell him
23 anything else at that time?
24 A. Not that I recall.

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1 Q. What did he say to you?
2 A. He said it could be a deal
3 killer.
4 Q. Did he report that in that
5 same conversation, in the one
6 conversation you had?
7 A. In the initial
8 conversation?
9 Q. Yes.
10 A. No.
11 Q. So he got back to you?
12 A. Yes.
13 Q. And can you approximate how
14 long it took?
15 A. Short period of time.
16 Q. Day? Hour?
17 A. Within a few days.
18 Q. Within a few days?
19 And Rob Kelly called you
20 back.
21 A. Right.
22 Q. And what did he say to you?
23 A. He said it was a problem.
24 Q. Could be a deal killer?

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1 Q. Did you ask him to do
2 anything else?
3 A. I relayed the information.
4 Q. You just relayed that
5 information and that's it.
6 A. And he told me he would
7 discuss it with the borrower.
8 Q. He said he would discuss it
9 with the borrower?
10 A. Uh-huh.
11 MR. DAVIS: You have to
12 respond yes or no. You have to
13 verbalize your response.
14 THE WITNESS: Oh, okay.
15 I'm sorry.
16 BY MR. SCHER:
17 Q. And was this the only time
18 you communicated to Rob Kelly on the
19 subject of the loan application after
20 the application had been completed?
21 A. I don't remember.
22 Q. Did he ever report back to
23 you that he had discussed it?
24 A. Yes. Yes.

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1 A. Uh-huh.
2 Q. Yes?
3 A. Yes.
4 Q. Did he amplify? Did he
5 expand on that?
6 A. That's pretty explanatory.
7 Q. That's it.
8 And if it had -- if the
9 deal had been killed at that moment,
10 you would have lost the \$965,000 in
11 fees; am I right about that?
12 MR. DAVIS: Objection.
13 Calls for speculation, calls for a
14 legal conclusion.
15 THE WITNESS: At that point
16 we didn't have any fees.
17 BY MR. SCHER:
18 Q. Well, the \$5,000 fee had
19 been paid when the --
20 A. Yes.
21 Q. -- application fee was
22 made.
23 A. Right.
24 Q. Okay. So your testimony is



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<p style="text-align: center;">86</p> <p>1 that at the time that you had this</p> <p>2 conversation with Rob Kelly, your</p> <p>3 distinct recollection is that there</p> <p>4 were no fees.</p> <p>5 MR. DAVIS: Objection.</p> <p>6 BY MR. SCHER:</p> <p>7 Q. No other fees had been</p> <p>8 posted or paid?</p> <p>9 A. No. I didn't say that.</p> <p>10 Q. Okay. So you had a Letter</p> <p>11 of Credit?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And you had a Letter</p> <p>14 of Credit for the full 960?</p> <p>15 A. For 2 percent, as I recall.</p> <p>16 Q. Okay. So that would be the</p> <p>17 2 percent of the amount, whatever it</p> <p>18 is.</p> <p>19 A. Right.</p> <p>20 Q. The four --</p> <p>21 A. 640.</p> <p>22 Q. 640. 640.</p> <p>23 You would have -- that 640</p> <p>24 would have been refunded to the</p>	<p style="text-align: center;">88</p> <p>1 point, the change of the deal to</p> <p>2 include a new criteria, the 10</p> <p>3 percent constant; right?</p> <p>4 MR. DAVIS: Objection.</p> <p>5 THE WITNESS: The</p> <p>6 application was being looked at to</p> <p>7 determine whether it would be</p> <p>8 approved or not.</p> <p>9 The 10 percent constant was</p> <p>10 requested by Hancock to be inserted</p> <p>11 into the application. It was not.</p> <p>12 And subsequently it was</p> <p>13 eliminated from the application,</p> <p>14 which became a commitment, and</p> <p>15 therefore, it didn't matter. There</p> <p>16 are lots of things that are</p> <p>17 negotiated.</p> <p>18 BY MR. SCHER:</p> <p>19 Q. Can you recall anything</p> <p>20 that Mr. Kelly said to you in that</p> <p>21 conversation other than what you've</p> <p>22 already -- that is, the second</p> <p>23 conversation when he reported back to</p> <p>24 you, other than what he's already --</p>
<p style="text-align: center;">87</p> <p>1 prospective borrower had the deal</p> <p>2 been killed, am I right about that,</p> <p>3 as far as you know?</p> <p>4 A. Yes.</p> <p>5 MR. DAVIS: Objection.</p> <p>6 Pause before you respond.</p> <p>7 Objection.</p> <p>8 MR. SCHER: What's the</p> <p>9 basis?</p> <p>10 MR. DAVIS: Again, I think</p> <p>11 it calls for a legal conclusion.</p> <p>12 MR. SCHER: Okay.</p> <p>13 BY MR. SCHER:</p> <p>14 Q. And the practice at John</p> <p>15 Hancock, if the deal is killed prior</p> <p>16 to the approval of the loan</p> <p>17 application, the Letter of Credit</p> <p>18 posting is refunded to the</p> <p>19 prospective borrower.</p> <p>20 A. If the deal is changed and</p> <p>21 it's not approved by the borrower,</p> <p>22 the money is refunded.</p> <p>23 Q. Okay. And that's exactly</p> <p>24 what was being discussed at that</p>	<p style="text-align: center;">89</p> <p>1 what you've already reported?</p> <p>2 A. Not that I recall.</p> <p>3 MR. SCHER: Let me take a</p> <p>4 two-minute break.</p> <p>5 I have a computer problem</p> <p>6 here.</p> <p>7 (Recess, 11:11-11:25 a.m.)</p> <p>8 (Exhibit Ferrie-1 was</p> <p>9 marked for identification.)</p> <p>10 BY MR. SCHER:</p> <p>11 Q. I'll show you what I've had</p> <p>12 marked as Ferrie Exhibit 1. And the</p> <p>13 drill is as follows: I'll identify</p> <p>14 the document.</p> <p>15 It's a document from you to</p> <p>16 kelly@ckpp.com and it's -- the body</p> <p>17 of the E-mail says Rob, and then it</p> <p>18 consists of two pages which are Bates</p> <p>19 stamped JH 00133 and 134.</p> <p>20 Is that the document you</p> <p>21 have in front of you?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Do you -- so does</p> <p>24 that refresh your recollection as to</p>



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<p>90</p> <p>1 the sequence of events which you've 2 been describing in connection with 3 your communications with Rob Kelly? 4 MR. DAVIS: Objection. 5 You can respond. 6 THE WITNESS: I don't -- I 7 don't follow you. 8 BY MR. SCHER: 9 Q. Does that refresh your 10 recollection as to your 11 communications with Rob Kelly? 12 MR. DAVIS: Objection. 13 I think he testified to 14 this. 15 But you can go ahead and 16 respond. 17 THE WITNESS: Right. I -- 18 this E-mail is sent to Rob Kelly, 19 which I think I already told you I 20 sent him an E-mail. 21 MR. SCHER: Okay. 22 BY MR. SCHER: 23 Q. Let me -- let's -- let me 24 just review, if I understand this</p>	<p>92</p> <p>1 A. -- protocol. 2 Q. From the time -- let me ask 3 you this: Until this communication 4 with Rob Kelly, you said that -- 5 strike that. 6 Why didn't you tell Jim 7 Koller or Joe Kelly or Frank Palopoli 8 about this what you describe as a 9 slight hiccup? 10 A. I wanted to get -- 11 MR. DAVIS: Objection. 12 You can respond. 13 THE WITNESS: Okay. 14 I wanted to get Rob's 15 input. 16 BY MR. SCHER: 17 Q. And why did you talk to Rob 18 about this at all? You hadn't spoken 19 to Rob in connection with the loan 20 application, had you? 21 A. I don't recall. 22 Q. Why did you want his input? 23 A. Because he was the 24 borrower's representative.</p>
<p>91</p> <p>1 correctly. 2 You learned from Tim Malik 3 that there was a new requirement 4 called a 10 percent constant; right? 5 MR. DAVIS: Objection. 6 You can respond. 7 THE WITNESS: Yes. 8 BY MR. SCHER: 9 Q. And did you object to Mr. 10 Malik at that point, to the 11 introduction of a new criteria? 12 A. I don't remember. 13 Q. And you took that 14 information and conveyed it to Rob 15 Kelly; am I right about that? 16 A. Yes. 17 Q. Did you convey that to Rob 18 Kelly in this E-mail, which has been 19 marked Ferrie-1, or did you convey it 20 in a phone conversation? 21 A. Don't recall specifically. 22 I would -- I would have called him 23 first. That would be my normal -- 24 Q. Okay.</p>	<p>93</p> <p>1 Q. From -- except for this 2 E-mail, all your other communications 3 are directly with the borrower. 4 Can you explain to me 5 any -- in any greater detail than you 6 have already why it is you chose to 7 communicate with Rob Kelly on -- in 8 connection with this new criteria? 9 MR. DAVIS: Objection. 10 THE WITNESS: I believe I 11 had constant communication with Rob 12 Kelly with regard to how the 13 application was proceeding. 14 MR. SCHER: Okay. 15 BY MR. SCHER: 16 Q. Now, you told me that in 17 your second conversation -- telephone 18 conversation with Rob Kelly he said 19 it was a deal killer and it was a 20 problem; right? 21 A. Yes. 22 Q. Did you communicate that to 23 anyone? 24 A. Yes.</p>



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<p style="text-align: center;">94</p> <p>1 Q. Who did you communicate 2 that to? 3 A. Tim Malik. 4 Q. And what did you tell him? 5 A. I told him it's a -- it's a 6 problem. It wasn't in the original 7 application, it should be stricken, 8 and it subsequently was. 9 Q. What did Malik say to you 10 in that conversation? 11 A. I don't recall. 12 Q. How did you learn that it 13 was stricken? 14 A. Because we committed 15 without that constant being in there. 16 Q. Right. 17 So if I have the sequence 18 correctly, you called Rob Kelly, told 19 him there was a problem and it was a 20 new criteria, you sent him Ferrie-1, 21 the E-mail; is that right? 22 MR. DAVIS: Objection. 23 You can respond. 24 THE WITNESS: I can't say</p>	<p style="text-align: center;">96</p> <p>1 get his input. He said he'd check 2 with the borrower, get back to me. 3 And I waited to hear back from him. 4 Q. Okay. And other than your 5 communicating with Mr. Malik and 6 conveying to him what Rob Kelly told 7 you, deal killer, big problem, and 8 Mr. Malik -- other than that 9 communication with Mr. Malik, was 10 there -- did you have any other 11 communication with anyone on the 12 subject of the 10 percent constant? 13 A. I didn't have any 14 communication with Mr. Malik until 15 after I got a response from Rob 16 Kelly. 17 Q. Okay. So you got a 18 response from Rob Kelly and you 19 communicated that response in essence 20 to Tim Malik; right? 21 A. Yes. 22 Q. What else? What else did 23 you do with the information you 24 obtained from Mr. Kelly? Anything</p>
<p style="text-align: center;">95</p> <p>1 definitively that -- it sounds like 2 what I would have done. 3 BY MR. SCHER: 4 Q. And then between the time 5 that you communicated with Mr. Kelly 6 by phone and E-mail and the time that 7 you received word back from Mr. Kelly 8 by phone, is it accurate to say that 9 you did nothing in connection with 10 the Avenel loan? Is that accurate? 11 MR. DAVIS: Objection. 12 THE WITNESS: I don't -- 13 MR. DAVIS: If you know. 14 THE WITNESS: I don't know 15 what -- I don't follow. 16 BY MR. SCHER: 17 Q. What else did you do? 18 So you're told of the new 19 criteria. 20 A. Right. 21 Q. Other than your 22 communications with Rob Kelly, what 23 else did you do? 24 A. I called Rob, I wanted to</p>	<p style="text-align: center;">97</p> <p>1 else other than communicate to Mr. 2 Malik? 3 A. I don't know what else I 4 would be doing. 5 Q. Call, you know, Mr. 6 McPadden. 7 A. No. 8 Q. Okay. Called someone else 9 in Boston. 10 A. No. 11 Q. Okay. And what was Mr. 12 Malik's response to you at that time? 13 MR. DAVIS: Objection. 14 I think this has been asked 15 and answered. 16 You can respond. 17 THE WITNESS: I don't 18 recall. 19 MR. SCHER: Okay. 20 BY MR. SCHER: 21 Q. And that, as far as you 22 know, that is all -- those are all 23 the communications that you had on 24 the subject of the 10 percent</p>



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<p style="text-align: center;">98</p> <p>1 constant that you can recall; am I 2 right? 3 A. As far as I can remember, 4 that's it. 5 Q. Okay. 6 A. And it was subsequently 7 removed and committed without it, 8 so... 9 Q. Right. That's -- you've 10 told me that several times. 11 Subsequent to the Avenel 12 deal, have you included in loan 13 applications the 10 percent constant? 14 A. No. 15 Q. Has the 10 percent constant 16 criteria been eliminated from the 17 criteria that are employed by John 18 Hancock? 19 A. There still is a loan 20 sizing constant. 21 Q. But not a 10 percent 22 constant. 23 A. As I -- 24 MR. DAVIS: You can</p>	<p style="text-align: center;">100</p> <p>1 Q. Yes. 2 A. Prior to August of 2004? 3 Q. Yes. 4 A. When we -- yes. Okay. 5 Q. Is that right? 6 A. When we committed on it, 7 yes. 8 Q. Yes. Okay. 9 You testified that one of 10 the changes which had been introduced 11 by -- subsequent to the acquisition 12 of John Hancock by Manulife was the 13 introduction of the signature process 14 as compared with the committee 15 process for loan approvals; right? 16 A. Yes. 17 Q. Is it accurate to say that 18 this is the first loan which you 19 originated which employed that new 20 procedure? 21 A. I don't recall. 22 Q. When the committee process 23 was employed, did you as the loan 24 originator receive a copy of the</p>
<p style="text-align: center;">99</p> <p>1 respond. 2 THE WITNESS: As I said, 3 it's been adjusted and it's not a 4 absolute indicator, it's just an 5 indicator along with other things. 6 MR. SCHER: Okay. 7 BY MR. SCHER: 8 Q. So subsequent to the Avenel 9 situation, the 10 percent constant 10 has been modified -- 11 MR. DAVIS: Objection. 12 BY MR. SCHER: 13 Q. -- in the ways in which 14 you've described it; right? 15 MR. DAVIS: Objection. 16 BY MR. SCHER: 17 Q. In other words, I'm just 18 trying to get the timing of the 19 changes to the 10 percent constant. 20 The changing of the 10 percent 21 constant occurred after this episode 22 in August of 2004. 23 A. Probably. 24 Wait. Can I --</p>	<p style="text-align: center;">101</p> <p>1 approval? 2 A. The commitment? 3 Q. Yes. 4 A. Yes. 5 Q. The minutes of the meeting? 6 You would receive a copy of the 7 minutes of the meeting? 8 A. The minutes of the -- no. 9 Unh-unh. 10 Q. Okay. And, of course, 11 after the signature -- 12 A. I would say -- let me -- 13 there are no -- there were no minutes 14 to the meeting. 15 Q. Okay. And after the loan 16 approval process changed to the 17 signature process, you did not 18 receive any notification of the 19 signing of that loan approval other 20 than the loan application. 21 A. No. I'd get a call saying 22 it's been approved. 23 Q. Okay. And informally just 24 as you've described it.</p>



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<p style="text-align: center;">102</p> <p>1 A. Right. Tim would call me 2 and say it's -- you know, all the 3 signatures have been obtained, it's 4 approved. 5 Q. Okay. He would not tell 6 you chapter and verse on the criteria 7 employed to approve the loan; right? 8 A. No. 9 Q. Is that right? 10 A. That's correct. 11 Q. Okay. What -- in terms of 12 the volume of loans that you generate 13 through your office, what percentage, 14 if you can state it in percentage or 15 number, of loans are originated in 16 your office annually? 17 MR. DAVIS: Objection. 18 Percentage based on what? 19 BY MR. SCHER: 20 Q. What's the number of loans 21 that are originated in your office? 22 How many? 20? 70? 150? 23 A. We're typically 150 to 200 24 million dollars a year.</p>	<p style="text-align: center;">104</p> <p>1 concerned with interest rates rising. 2 Q. So this was an unusual 3 phenomenon in your experience; am I 4 right? 5 MR. DAVIS: Objection. 6 BY MR. SCHER: 7 Q. The seeking of forward 8 commitments was an unusual phenomenon 9 in your experience. 10 MR. DAVIS: Objection. 11 THE WITNESS: No. 12 BY MR. SCHER: 13 Q. The volume of seeking of 14 forward commitments was unusual. 15 A. No. 16 Q. Well, had this happened 17 before, this -- 18 A. Yeah. Each time that 19 interest rates look like they're 20 taking a major swing up, borrowers 21 would be concerned about having a 22 commitment later, so they'd prefer to 23 lock the rate today rather than 24 tomorrow.</p>
<p style="text-align: center;">103</p> <p>1 Q. In dollar volume? 2 A. Right. 3 Q. And of that 150 to 200 4 million a year, what percentage are 5 forward commitments? In other words, 6 of a duration greater than 60 days 7 from the time of the loan application 8 approval to the closing of the loan. 9 A. Well, in 2004, 2005, 10 probably 50 percent of my business 11 was forwards. 12 Q. And why is that? That's 13 unusual; right? 14 A. Yes. 15 Q. Typically, prior to 2004, 16 what would the percentage be? 10 17 percent? 5 percent? 18 A. I'm not -- I'm not sure. 19 But minimal. 20 Q. Minimal. 21 And just, you know, state 22 the obvious as to why this 50 percent 23 level is -- 24 A. Because borrowers were</p>	<p style="text-align: center;">105</p> <p>1 Q. Has John Hancock always 2 been in the business of, as long as 3 you've been with them, in the 4 business of making forward commitment 5 loans? 6 A. I don't know. 7 Q. Have you been making 8 forward commitment loans for John 9 Hancock from the time you started 10 with them? 11 A. I have to check my loan 12 portfolio. I can't recall offhand. 13 Q. Okay. Was it unusual 14 when -- out of the ordinary when you 15 started making this -- the forward 16 loan commitment at a volume of 50 17 percent? 18 MR. DAVIS: Objection. 19 You can answer. 20 THE WITNESS: I'd say that 21 volume was atypical. Yes. 22 MR. SCHER: Okay. 23 BY MR. SCHER: 24 Q. When had it last occurred,</p>



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<p style="text-align: center;">106</p> <p>1 a volume of 50 percent of forward 2 commitments, in your memory? 3 A. I can't recall. 4 Q. Are you still -- are you 5 still making loan commitments at that 6 level now? 7 MR. DAVIS: Objection. 8 BY MR. SCHER: 9 Q. Are you still making 10 forward loan commitments at that 11 level now, at that percentage now? 12 A. If we had the 13 opportunities, we would be willing to 14 do that, yes. 15 Q. Okay. In fact, what is the 16 volume of -- in -- in 2004 and 2005 17 it was 50 percent; right? 50 percent 18 of your loans -- 19 A. I'll just -- no, that's off 20 the top of my head. 21 Q. Ballpark? 22 A. Right. 23 Q. Ballpark of the 150 to 200 24 million --</p>	<p style="text-align: center;">108</p> <p>1 A. Yes. 2 Q. That's not the Exhibit 1 to 3 the loan application, is it? 4 MR. DAVIS: Objection. 5 Are you saying is it the 6 same document that's attached to the 7 loan? 8 MR. SCHER: Right. 9 BY MR. SCHER: 10 Q. That's not the same 11 document, is it? 12 A. No. The 10 percent 13 constant was eliminated from the 14 commitment. 15 Q. The loan application does 16 not contain an Exhibit A which shows 17 a 10 percent constant; right? 18 A. Correct. The application 19 does not show the 10 percent 20 constant. 21 Q. Right. 22 There are a number of other 23 changes on that Exhibit 1-A that's 24 attached to your Ferrie Exhibit 1.</p>
<p style="text-align: center;">107</p> <p>1 A. Right. Right. 2 Q. -- approximately 75 million 3 or so were forward commitments. 4 A. Forward commitments. Yes. 5 Correct. 6 Q. Now, in Ferrie Exhibit 1 7 you say it's a slight hiccup. 8 Is that -- it was really a 9 deal breaker; right? I mean, you 10 knew it was going to be a deal 11 breaker, didn't you? 12 MR. DAVIS: Objection. 13 THE WITNESS: No. 14 BY MR. SCHER: 15 Q. Why did you think it was a 16 slight hiccup? 17 A. Because it was a change to 18 the original application. 19 Q. And this Exhibit 1-A, which 20 is attached to your E-mail, that's a 21 document that was generated from Mr. 22 Malik; right? 23 A. Yes. 24 Q. He had sent that to you?</p>	<p style="text-align: center;">109</p> <p>1 Did you have anything to do with 2 making the changes from the exhibit 3 attached to the loan application? 4 A. Not that I recall. 5 MR. DAVIS: Objection. 6 THE WITNESS: Oh, okay. 7 Not that I recall. 8 MR. SCHER: Let's mark this 9 as Ferrie-2. 10 (Exhibit Ferrie-2 was 11 marked for identification.) 12 BY MR. SCHER: 13 Q. I'll show you what I've had 14 marked as Ferrie Exhibit 2, and that 15 is a copy of the application to John 16 Hancock Life Insurance Company for a 17 first mortgage loan dated July 30, 18 2004, Bates stamped JH 00327 through 19 396. 20 Do you have that in front 21 of you? 22 A. Yes. 23 Q. This is the loan 24 application to which you made</p>



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<p style="text-align: center;">110</p> <p>1 reference which is fully executed by 2 the prospective borrower and by John 3 Hancock; am I right? 4 A. It appears to be. 5 Q. On Bates stamp JH 00373 6 there is a -- an Exhibit 1. 7 Do you see that? 8 A. And where would that be? 9 Q. JH 373. So if you look at 10 the Bates stamp number that's -- 11 MR. DAVIS: Look in the 12 lower right-hand corner. 13 BY MR. SCHER: 14 Q. That's a good way -- that's 15 a constant numbering process. So if 16 you go to 373, you'll see the page 17 I'm looking at. 18 A. Okay. I have it. 19 Q. That's the version of 20 Exhibit 1 which was submitted by the 21 borrower in connection with the loan 22 application; am I right? 23 A. This is the Exhibit 1 that 24 was submitted with the application</p>	<p style="text-align: center;">112</p> <p>1 I may have. I don't have 2 any specific recollection. 3 BY MR. SCHER: 4 Q. Did you participate in the 5 modification of -- to Exhibit 1 which 6 appears as Page 2 of Ferrie Exhibit 7 1? 8 A. That's the one with the 10 9 percent constant? 10 Q. Correct. 11 A. Not to my recollection. 12 Q. Okay. Did you ever discuss 13 with the prospective borrower 14 modifications to Exhibit 1? 15 A. This one? 16 Q. Yes. 17 A. There was no need to 18 because there wasn't any 19 modification. 20 Q. No modifications? 21 A. The one that -- the Exhibit 22 1 that was approved by Hancock is the 23 one that's in the application. 24 Q. And it's the one that</p>
<p style="text-align: center;">111</p> <p>1 and subsequently approved by Hancock. 2 Q. Okay. Did you participate 3 in any of the various modifications 4 to Exhibit 1 which appear in this 5 document? 6 A. Could you repeat the 7 question, please? 8 Q. Yes. Exhibit 1 appears in 9 various iterations, the example in 10 Ferrie-1 called Exhibit 1-A, and 11 there are several others in these -- 12 in the documents produced by John 13 Hancock. 14 My preliminary question to 15 you is, did you participate in any 16 way in any of the modifications to 17 Exhibit 1 which are reflected in the 18 documents produced by John Hancock? 19 MR. DAVIS: Objection. 20 You may respond. 21 THE WITNESS: Specifically 22 on 373? 23 MR. SCHER: Yes. 24 THE WITNESS: Document 373?</p>	<p style="text-align: center;">113</p> <p>1 you're looking at right now? 2 A. Yes. 3 Q. And is that the practice of 4 John Hancock that you're describing; 5 that is, that what's contained in the 6 loan application is the -- is the 7 exhibit contained in the loan 8 application ever the subject of 9 modification after the loan 10 application is made, originally made? 11 In other words, 12 underwriting issues arise, questions 13 arise with respect to the amount of 14 reserves or operating expenses are 15 analyzed and evaluated and adjusted. 16 Is that -- is there a 17 process by which those numbers which 18 are reflected on Exhibit 1 are 19 modified, that John Hancock employs? 20 MR. DAVIS: Objection. 21 BY MR. SCHER: 22 Q. That was a long question. 23 Do you want me to shorten it up? 24 A. No. I know -- I think I</p>



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<p>114</p> <p>1 get the gist.</p> <p>2 Q. Okay.</p> <p>3 A. The application is subject</p> <p>4 to modification in any form until</p> <p>5 it's approved.</p> <p>6 Q. Okay. All right.</p> <p>7 So that -- so is it typical</p> <p>8 or unusual for John Hancock to say,</p> <p>9 we have your application, it will not</p> <p>10 be approved in its current form, it</p> <p>11 needs to be modified.</p> <p>12 If it can be modified in</p> <p>13 these certain respects like, you</p> <p>14 know, get the signature of your wife</p> <p>15 on it or change the expense that</p> <p>16 you're identifying on Exhibit 1, it</p> <p>17 will not be approved?</p> <p>18 MR. DAVIS: Objection.</p> <p>19 THE WITNESS: If that were</p> <p>20 to be done, it would be done by way</p> <p>21 of an approval with an amendment.</p> <p>22 MR. SCHER: Okay.</p> <p>23 BY MR. SCHER:</p> <p>24 Q. So typically in the event</p>	<p>116</p> <p>1 MR. SCHER: If there --</p> <p>2 MR. DAVIS: Are you saying</p> <p>3 if the parties had agreed to modify</p> <p>4 Exhibit 1 --</p> <p>5 MR. SCHER: It would be in</p> <p>6 writing.</p> <p>7 MR. DAVIS: -- that would</p> <p>8 be in writing?</p> <p>9 MR. SCHER: Yes.</p> <p>10 BY MR. SCHER:</p> <p>11 Q. Am I right about that?</p> <p>12 A. Between -- well, when the</p> <p>13 loan is approved, when the investment</p> <p>14 officer signs it, what's in the</p> <p>15 application has been approved. If</p> <p>16 there's a change, it would be in the</p> <p>17 form of an amendment.</p> <p>18 Q. And that amendment would be</p> <p>19 in writing?</p> <p>20 A. And that amendment would be</p> <p>21 in writing. That's correct.</p> <p>22 Q. Okay. Now, from the time</p> <p>23 that the loan application is approved</p> <p>24 until the time that the loan is</p>
<p>115</p> <p>1 that is necessary in a loan</p> <p>2 application, there would be an</p> <p>3 amendment prepared and it would be</p> <p>4 signed by everyone; am I right?</p> <p>5 A. I don't know if it would be</p> <p>6 necessary to have it signed by</p> <p>7 anybody. It depends on the scope of</p> <p>8 the change.</p> <p>9 Q. Okay. So that could be --</p> <p>10 but there would be a writing which</p> <p>11 would record, refer, or reflect the</p> <p>12 modification to the loan application.</p> <p>13 A. There would be an amendment</p> <p>14 that would have to be signed by the</p> <p>15 borrower --</p> <p>16 Q. Okay.</p> <p>17 A. -- okaying the change.</p> <p>18 Q. And would you agree that</p> <p>19 the -- that changes to Exhibit 1,</p> <p>20 were any of those changes material to</p> <p>21 the loan application approval</p> <p>22 process, they would have been</p> <p>23 reflected in a writing?</p> <p>24 MR. DAVIS: Objection.</p>	<p>117</p> <p>1 closed --</p> <p>2 A. Excuse me --</p> <p>3 Q. -- there are a number of</p> <p>4 things which occur in connection with</p> <p>5 a forward commitment like the one in</p> <p>6 the Avenel transaction; am I right</p> <p>7 about that?</p> <p>8 MR. DAVIS: Objection.</p> <p>9 You can respond.</p> <p>10 THE WITNESS: I don't --</p> <p>11 can you clarify it?</p> <p>12 MR. SCHER: Sure.</p> <p>13 BY MR. SCHER:</p> <p>14 Q. From the time of the</p> <p>15 approval of the loan until the time</p> <p>16 that the loan is closed there are a</p> <p>17 number of changes, facts which</p> <p>18 change, including the leasing of the</p> <p>19 apartments and the reaching of a</p> <p>20 vacancy rate or an occupancy rate and</p> <p>21 generation of expenses; am I right</p> <p>22 about that?</p> <p>23 A. Still, I'm not clear.</p> <p>24 Q. Okay. What I'm asking you</p>



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<p style="text-align: center;">118</p> <p>1 is -- let me ask it this way: Prior</p> <p>2 to the time of the closing of the</p> <p>3 loan, what level of -- what type of</p> <p>4 due diligence do you do to verify</p> <p>5 that there has been compliance with</p> <p>6 the requirements set forth in the</p> <p>7 loan application?</p> <p>8 A. I think I've already stated</p> <p>9 that I sign a Amendment to this</p> <p>10 application.</p> <p>11 Q. The Affidavit that's</p> <p>12 attached to this --</p> <p>13 A. I forget what the exhibit</p> <p>14 number is.</p> <p>15 Page 377.</p> <p>16 Q. Now, you have already</p> <p>17 signed Page 377, so my question is,</p> <p>18 after this loan application is</p> <p>19 completed --</p> <p>20 A. There would be a</p> <p>21 subsequent.</p> <p>22 Q. Okay.</p> <p>23 A. Right.</p> <p>24 Q. So meaning a subsequent --</p>	<p style="text-align: center;">120</p> <p>1 correspondent, right, in this case?</p> <p>2 A. I am the John Hancock</p> <p>3 representative. Yes.</p> <p>4 Q. Right. JH --</p> <p>5 A. Well, I mean, in terms of</p> <p>6 this -- this reference here,</p> <p>7 correspondent certification, JHREF,</p> <p>8 John Hancock Real Estate Finance is</p> <p>9 the correspondent.</p> <p>10 Q. And Blue Bell is your</p> <p>11 office?</p> <p>12 A. Yes.</p> <p>13 Q. And then that's -- you're</p> <p>14 the regional vice-president.</p> <p>15 A. Right.</p> <p>16 Q. And that's your signature.</p> <p>17 A. Yes.</p> <p>18 Q. And your title is regional</p> <p>19 vice-president; right?</p> <p>20 A. Right.</p> <p>21 Q. Okay.</p> <p>22 (Exhibit Ferrie-3 was</p> <p>23 marked for identification.)</p> <p>24 BY MR. SCHER:</p>
<p style="text-align: center;">119</p> <p>1 there would be simply a blank</p> <p>2 correspondence certification that had</p> <p>3 not yet been signed and you would</p> <p>4 sign it again as of the date of the</p> <p>5 closing on the loan?</p> <p>6 A. Generally, within a couple</p> <p>7 weeks of the loan closing. Yes.</p> <p>8 Q. Okay. But it would be this</p> <p>9 form.</p> <p>10 A. Yes.</p> <p>11 Q. So what we're looking at is</p> <p>12 Exhibit B, which begins on Page 374,</p> <p>13 Sections A through F; is that right?</p> <p>14 That's the document that you would</p> <p>15 sign off on?</p> <p>16 A. No. I'm signing off on the</p> <p>17 operating statements and rent roll.</p> <p>18 The first part of the Exhibit B is</p> <p>19 prepared by the borrower.</p> <p>20 Q. Okay. So it's only that</p> <p>21 correspondent certification that</p> <p>22 you're signing off on; right?</p> <p>23 A. Yes.</p> <p>24 Q. And you're the</p>	<p style="text-align: center;">121</p> <p>1 Q. I'll show you what I've had</p> <p>2 marked as Ferrie Exhibit 3, which is</p> <p>3 the August 11th E-mail from Tim Malik</p> <p>4 to you.</p> <p>5 Do you have that in front</p> <p>6 of you?</p> <p>7 A. Yes.</p> <p>8 Q. This was on the subject of</p> <p>9 a request for approval to lower the</p> <p>10 reserves to fund the loan with a 75</p> <p>11 percent loan to value and a 1.25</p> <p>12 percent DSCR.</p> <p>13 Do you recall receiving</p> <p>14 this E-mail at or about the date it</p> <p>15 was sent?</p> <p>16 A. No. But I -- looking at --</p> <p>17 it certainly got to me, it appears.</p> <p>18 Q. Do you recall Mr. Malik</p> <p>19 trying something to secure the</p> <p>20 approval of the loan?</p> <p>21 A. Not -- no, I don't.</p> <p>22 Q. Do you see the second page</p> <p>23 of this E-mail, JH 132? Can you tell</p> <p>24 me what that is?</p>



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<p>122</p> <p>1 A. No.</p> <p>2 Q. You received a copy of it</p> <p>3 at or about the time attached to this</p> <p>4 E-mail, as far as you know?</p> <p>5 A. As far as I know, yeah.</p> <p>6 Q. It looks like a loan</p> <p>7 approval form, doesn't it?</p> <p>8 MR. DAVIS: Objection.</p> <p>9 THE WITNESS: I don't know.</p> <p>10 BY MR. SCHER:</p> <p>11 Q. Never seen anything like it</p> <p>12 before?</p> <p>13 A. Not to my recollection.</p> <p>14 Q. Do you see it calls for</p> <p>15 approvals by Ivor Thomas --</p> <p>16 A. Uh-huh.</p> <p>17 Q. -- David Henderson, and</p> <p>18 Patricia Coyne?</p> <p>19 A. Right.</p> <p>20 Q. Those are the people who</p> <p>21 approve loans; right?</p> <p>22 A. No.</p> <p>23 Q. You don't know who they</p> <p>24 are?</p>	<p>124</p> <p>1 that a form like this, which is JH</p> <p>2 132, has never been -- never before</p> <p>3 been seen by you?</p> <p>4 MR. DAVIS: Objection.</p> <p>5 You can respond.</p> <p>6 THE WITNESS: No. I'm not</p> <p>7 saying that. I'm saying I don't</p> <p>8 recall it.</p> <p>9 MR. SCHER: Okay.</p> <p>10 THE WITNESS: This is dated</p> <p>11 August the 11th.</p> <p>12 MR. SCHER: Right.</p> <p>13 THE WITNESS: The approval</p> <p>14 is dated August the 17th.</p> <p>15 MR. SCHER: Correct.</p> <p>16 THE WITNESS: The debt</p> <p>17 service coverage in Paragraph 16 and</p> <p>18 the loan to value are 125 and 75</p> <p>19 percent, so --</p> <p>20 BY MR. SCHER:</p> <p>21 Q. Just as it sets forth in</p> <p>22 that document; right?</p> <p>23 A. Just as it was set forth in</p> <p>24 the original application.</p>
<p>123</p> <p>1 A. Oh, yeah, I know who they</p> <p>2 are.</p> <p>3 Q. What role do they have in</p> <p>4 connection with the approval of</p> <p>5 loans?</p> <p>6 A. Ivor is the senior</p> <p>7 vice-president, Dave is a senior</p> <p>8 investment officer, and Patty Coyne</p> <p>9 is an investment officer in the</p> <p>10 credit division.</p> <p>11 Q. I can read that. I'm just</p> <p>12 asking what role did they play in</p> <p>13 connection with the approval of</p> <p>14 loans.</p> <p>15 A. Ivor Thomas is the head of</p> <p>16 the department. Dave Henderson at</p> <p>17 that time was my boss. He was</p> <p>18 replaced by Bill McPadden. And Patty</p> <p>19 Coyne is a credit officer.</p> <p>20 Q. So before Mr. Henderson was</p> <p>21 downsized, he was your boss as well</p> <p>22 as Mr. Malik's boss; right?</p> <p>23 A. Yes. Uh-huh.</p> <p>24 Q. And is it your testimony</p>	<p>125</p> <p>1 Q. Right.</p> <p>2 A. Which was subsequently</p> <p>3 approved.</p> <p>4 Q. So what approval is Mr.</p> <p>5 Malik seeking that he's making</p> <p>6 reference to in this E-mail to you?</p> <p>7 MR. DAVIS: Objection.</p> <p>8 I'd caution you --</p> <p>9 BY MR. SCHER:</p> <p>10 Q. Do you know?</p> <p>11 MR. DAVIS: -- not to</p> <p>12 speculate.</p> <p>13 THE WITNESS: I don't know.</p> <p>14 BY MR. SCHER:</p> <p>15 Q. You just got this</p> <p>16 E-mail as -- to the best of your</p> <p>17 recollection today, sitting here</p> <p>18 today, you get an E-mail from Tim</p> <p>19 Malik, it says: I guess I will try</p> <p>20 one more time the bureaucratic</p> <p>21 approach. I'll let you know how hard</p> <p>22 he laughs.</p> <p>23 Do you have any idea what</p> <p>24 he was referring to?</p>



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<p style="text-align: center;">126</p> <p>1 A. Sure.</p> <p>2 Q. Oh, could you explain to</p> <p>3 me?</p> <p>4 A. Yeah. The application was</p> <p>5 still in the approval process.</p> <p>6 Q. Yes.</p> <p>7 A. He needed the signatures of</p> <p>8 certain people up to a certain loan</p> <p>9 level.</p> <p>10 Q. Yes.</p> <p>11 A. And evidently he did not</p> <p>12 have those signatures at that point.</p> <p>13 Q. Okay.</p> <p>14 A. And subsequently he got the</p> <p>15 signatures, evidently, because he</p> <p>16 signed off on the application.</p> <p>17 Q. All right. So that -- does</p> <p>18 it -- is that all you can tell me?</p> <p>19 Is it -- you have no</p> <p>20 recollection that the preliminary</p> <p>21 review of the loan application was</p> <p>22 rejected and he was trying again to</p> <p>23 seek approval or is that just you</p> <p>24 just don't have any recollection of</p>	<p style="text-align: center;">128</p> <p>1 BY MR. SCHER:</p> <p>2 Q. He shared the internal</p> <p>3 discussion with you; am I right?</p> <p>4 A. Evidently.</p> <p>5 Q. Evidently.</p> <p>6 But you have no independent</p> <p>7 recollection of anything at all about</p> <p>8 the discussion that Mr. Malik is</p> <p>9 sharing with you.</p> <p>10 A. No.</p> <p>11 Q. That's correct? I'm</p> <p>12 correct?</p> <p>13 A. I have no independent</p> <p>14 recollection of what discussion he</p> <p>15 was having at that time.</p> <p>16 Q. Okay. And the E-mail that</p> <p>17 is below the E-mail to you, which is</p> <p>18 from Mr. Malik to Ivor Thomas seven</p> <p>19 minutes earlier than the E-mail to</p> <p>20 you, reflects a request for approval</p> <p>21 to lower reserves to \$150 a unit and</p> <p>22 to fund the loan with 75 percent LTV</p> <p>23 and 1.25 percent DSCR.</p> <p>24 The unit reserves were at</p>
<p style="text-align: center;">127</p> <p>1 that at all?</p> <p>2 MR. DAVIS: Objection.</p> <p>3 I again caution you not to</p> <p>4 speculate.</p> <p>5 THE WITNESS: What I'm</p> <p>6 saying is that this is an internal</p> <p>7 discussion. The loan was approved</p> <p>8 based on the original application. I</p> <p>9 don't have anything to do with</p> <p>10 internal discussions.</p> <p>11 BY MR. SCHER:</p> <p>12 Q. And yet Mr. Malik wanted</p> <p>13 to -- shared with you an internal</p> <p>14 discussion regarding the approval of</p> <p>15 the loan; right? He shared that with</p> <p>16 you.</p> <p>17 MR. DAVIS: If you know.</p> <p>18 THE WITNESS: In what case?</p> <p>19 MR. SCHER: In this case</p> <p>20 right here.</p> <p>21 THE WITNESS: This is not</p> <p>22 the approval. This is an internal</p> <p>23 discussion.</p> <p>24 MR. SCHER: Right.</p>	<p style="text-align: center;">129</p> <p>1 \$250 a unit in Exhibit 1 attached to</p> <p>2 the loan application; am I right</p> <p>3 about that?</p> <p>4 A. Let me check the Exhibit 1</p> <p>5 again.</p> <p>6 Q. Sure.</p> <p>7 Do you see what the loan</p> <p>8 amount is, the reserved amount is, in</p> <p>9 Exhibit 1?</p> <p>10 A. I'm trying to locate it.</p> <p>11 Q. 38,400?</p> <p>12 What's it reflected on</p> <p>13 Exhibit 1? It's not reflected? Is</p> <p>14 that what you're saying?</p> <p>15 MR. DAVIS: Howard, maybe</p> <p>16 you can point it out to him, the</p> <p>17 number that you're referring to, and</p> <p>18 he can confirm whether that's the</p> <p>19 loan, the unit reserve.</p> <p>20 MR. SCHER: Okay.</p> <p>21 BY MR. SCHER:</p> <p>22 Q. Take a look at JH 357.</p> <p>23 On the one, two, three,</p> <p>24 fourth paragraph begins, The DSCR</p>



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<p style="text-align: center;">130</p> <p>1 will be determined, and it shows a 2 replacement reserve of \$250 per unit; 3 right? 4 A. Yes. 5 Q. And now if you'd look at 6 the Ferrie Exhibit -- what is that? 7 3? 8 A. Right. 9 Q. You'll see that the 10 discussion is lowering the reserves 11 to \$150 a unit; right? 12 A. Right. 13 Q. Now, do you have any 14 recollection of any discussion 15 regarding lowering the reserves to 16 \$150 a unit? 17 A. Not that I recall. I may 18 have. 19 Q. And is it accurate to say 20 that were the reserves lowered to 21 \$150 a unit for the purpose of 22 approving the loan, that would be 23 reflected in a writing -- 24 MR. DAVIS: Objection.</p>	<p style="text-align: center;">132</p> <p>1 loan application at 250, changed to 2 150, not be the subject of a written 3 amendment? 4 MR. DAVIS: Objection. 5 Are you saying -- Howard, 6 are you saying a change to the actual 7 loan application? 8 MR. SCHER: I'm just 9 asking, would the change to \$150 10 necessitate a change to the loan 11 application? 12 MR. DAVIS: But again, are 13 you saying a change in the 14 application itself? Because the 15 application says 250, but you're 16 saying that if the -- if it was a 17 change in that agreement between the 18 parties? 19 MR. SCHER: Right. 20 BY MR. SCHER: 21 Q. If you -- 22 A. If there was a change in 23 the agreement, yes. 24 Q. It would be in writing.</p>
<p style="text-align: center;">131</p> <p>1 BY MR. SCHER: 2 Q. -- amending the loan 3 application? 4 MR. DAVIS: Objection. 5 That calls for speculation. 6 You can respond. 7 THE WITNESS: I think the 8 reserve requirement is a -- is an 9 underwriting situation, not a change. 10 This is a change that benefits the 11 borrower. 12 BY MR. SCHER: 13 Q. So changes which benefit 14 the borrower can be made without 15 amending the loan application and 16 changes which don't benefit the 17 borrower cannot be. Is that what 18 you're saying? 19 A. No. It's not what I'm 20 saying. 21 Q. Okay. Then what is it that 22 you're saying? Why would not the -- 23 why would the reduction in the 24 reserves, which is reflected in the</p>	<p style="text-align: center;">133</p> <p>1 A. Yes. 2 Q. Okay. Whether it favored 3 the borrower or not. 4 A. Yes. 5 Q. And it's your testimony 6 that you don't have any idea of why 7 Ivor Thomas would laugh with the 8 suggestion that the reserve be 9 reduced to \$150 a unit. 10 A. That's correct. 11 Q. At one point in time the 12 interest rate was locked; am I right 13 about that? 14 A. Yes. 15 Q. What, if any, role did you 16 play in connection with the locking 17 of the interest rate? 18 A. I can't tell you 19 specifically. I can tell you what I 20 normally do. 21 Q. What do you normally do? 22 A. Normally, we have a rate 23 that's posted in the morning by 24 Boston. I would call the borrower</p>



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<p style="text-align: center;">134</p> <p>1 and tell them that rate plus the 2 spread that we negotiated would be 3 the rate if you locked it today. 4 If the borrower agrees, he 5 signs the exhibit rate lock 6 agreement, we send it back to Hancock 7 and they countersign it and the rate 8 is locked. 9 Q. And what's the consequence 10 of locking the rate? What is the 11 economic consequence of locking the 12 rate? 13 A. I don't follow you. 14 Q. Does anybody pay for that, 15 rate lock? 16 A. What do you mean? 17 Q. Does it cost anything to 18 lock the rate? 19 A. Does it cost anything – it 20 costs the borrower 2 percent. 21 Q. 2 percent. 22 Does it cost John Hancock 23 anything to lock the rate? 24 A. I don't know.</p>	<p style="text-align: center;">136</p> <p>1 Q. Does that – why – do you 2 know why he told you that? Do you 3 know why? 4 MR. DAVIS: Objection. 5 You can respond. 6 THE WITNESS: I would think 7 it's probably because I asked him the 8 question. 9 BY MR. SCHER: 10 Q. And do you recall asking 11 him that question? 12 A. No. 13 Q. Why was the – what is a 14 hedge loss? 15 A. I don't know. Specifically 16 I don't know. I have a general idea 17 of what it is. 18 Q. Well, what's your general 19 idea of what it is? 20 A. It's a loss that occurs 21 when the treasury rates move below 22 the rate that the loan was locked at. 23 Q. And is the hedge loss an 24 actual loss or is it a paper loss?</p>
<p style="text-align: center;">135</p> <p>1 Q. Does John Hancock hedge, 2 that is, buy an instrument to 3 forestall the possibility that they 4 would lose money on closing the loan 5 at the rate that it was locked in? 6 A. Specifically on Avenel? 7 Q. Yes. 8 A. I don't know. 9 Q. Do they generally do that? 10 A. I don't know. Sometimes 11 they do, sometimes they don't. 12 Q. Let me show you the next 13 document. 14 (Exhibit Ferrie-4 was 15 marked for identification.) 16 BY MR. SCHER: 17 Q. Again on August 11, 2004, 18 I'll show you what's been marked as 19 Ferrie Exhibit 4, and Mr. Malik is 20 telling you for your information that 21 the hedge loss today on August 11 22 would be \$355,000. 23 Do you see that? 24 A. Yes.</p>	<p style="text-align: center;">137</p> <p>1 MR. DAVIS: Objection. 2 THE WITNESS: I don't know. 3 BY MR. SCHER: 4 Q. Do you know what Mr. Malik 5 was trying to – well, you think you 6 asked him what the hedge loss would 7 be as of August 11th? 8 A. Yes. 9 Q. And why would you – why 10 did you ask him that? 11 A. It appears from reading 12 your exhibits here that I probably 13 asked him what the hedge loss would 14 be in order to get the application 15 approved as it was submitted since 16 treasuries had dropped. 17 And consequently, if we did 18 not approve the application as 19 submitted, the borrower would have 20 the opportunity to walk. 21 Q. And what does that have to 22 do with the \$355,000? 23 A. Hancock would have suffered 24 a loss.</p>



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<p style="text-align: center;">138</p> <p>1 Q. So don't let me 2 mischaracterize what you're saying, 3 but is it your testimony that you 4 were saying in connection with 5 your -- you and Boston's 6 decision-making process regarding the 7 approval of the loan application, 8 please keep in mind that as of today, 9 there would be a hedge loss that John 10 Hancock would suffer because of the 11 change in the interest rates? 12 MR. DAVIS: Objection. 13 BY MR. SCHER: 14 Q. Is that a fair 15 characterization? 16 A. What I -- 17 MR. DAVIS: Objection. 18 THE WITNESS: What I'm 19 saying is that in order to expedite 20 the application being approved as it 21 was submitted, I asked Tim what the 22 potential losses would be to Hancock. 23 BY MR. SCHER: 24 Q. And you believed at the</p>	<p style="text-align: center;">140</p> <p>1 that it would be a contributing 2 factor to John Hancock's 3 decision-making process with respect 4 to the loan application were they to 5 know that the hedge loss would be 6 \$355,000 on that day? Common sense? 7 A. Well, the fact that you 8 would suffer a loss as opposed to 9 approving the loan. 10 Q. And I know it's 11 self-evident to you, but why did you 12 think that would be a contributing 13 factor to influence John Hancock's -- 14 A. Because -- 15 Q. -- decision? 16 A. Because the -- if the loan 17 were not approved as submitted in the 18 application, the borrower has the 19 right to walk unless you can come to 20 some, you know, modification. 21 The fact that we're going 22 to suffer a loss is a negative, and, 23 therefore, be aware that if you 24 change the application and the</p>
<p style="text-align: center;">139</p> <p>1 time that it would expedite Hancock's 2 favorable decision on the loan 3 application if they were to know what 4 their hedge loss would be as of that 5 time. 6 A. I thought it would be a 7 contributing factor. Yes. 8 Q. And you did not observe in 9 this E-mail or otherwise that the 10 Letter of Credit would be rescinded 11 if the loan application were not 12 granted; am I right about that? 13 MR. DAVIS: Objection. 14 THE WITNESS: I don't 15 follow. 16 BY MR. SCHER: 17 Q. You didn't point that out 18 when you sent this E-mail, but that 19 was true as well, wasn't it? 20 A. Well, it's in the 21 application. Borrower gets -- if the 22 application gets changed, the 23 borrower gets his money back. 24 Q. Okay. What made you think</p>	<p style="text-align: center;">141</p> <p>1 borrower doesn't agree to it, you are 2 not only going to lose this deal, but 3 you're going to suffer a loss in 4 hedge costs. 5 Q. Did you ask Malik to 6 calculate the hedge loss because you 7 knew it was going to be a positive 8 number of some size? 9 A. Well, I knew the treasury 10 rates had dropped. I didn't know 11 what the -- what the sum would be. 12 Q. Okay. Do you know what, if 13 any, action Mr. Malik took with the 14 calculation he performed? The hedge 15 loss calculation? 16 A. No. 17 MR. DAVIS: Is this a good 18 time to stop for lunch -- 19 MR. SCHER: Oh. 20 MR. DAVIS: -- or you tell 21 me. 22 MR. SCHER: Sure. 23 MR. DAVIS: We can go for 24 another -- but I think we'd probably</p>



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<p style="text-align: center;">142</p> <p>1 want to take a break for lunch – 2 MR. SCHER: Okay. Let's 3 take a – we can take a break right 4 now. 5 MR. DAVIS: Okay. 6 MR. SCHER: And I believe 7 I'm going to have to take a 15-minute 8 break – doesn't really matter – 9 around 2:00. 10 MR. DAVIS: Uh-huh. 11 MR. SCHER: I don't think 12 I'll be done by then, but I'm going 13 to try to see how far we can get and 14 see if we can't move it along. 15 MR. DAVIS: Okay. 16 (Luncheon recess, 17 12:22-1:12 p.m.) 18 AFTERNOON SESSION 19 (Exhibit Ferrie-5 was 20 marked for identification.) 21 BY MR. SCHER: 22 Q. I'll show you what I've had 23 marked as Ferrie Exhibit 5. It's a 24 document – an E-mail from you to Tim</p>	<p style="text-align: center;">144</p> <p>1 lines in it and stationery. 2 A. Yes. It requires input. 3 Q. Yes. 4 A. Yes. 5 Q. And you obtained the 6 information which you input from the 7 prospective borrower; am I right? 8 A. And his representative. 9 Q. Yes. 10 A. In case of a, you know, 11 mortgage banker or broker. 12 Q. Right. 13 And this form ultimately 14 results in a commercial rating? 15 A. The form doesn't result in 16 a rating. The – 17 Q. I'm looking at 105. 18 A. Okay. The 105, yeah, 19 indicates a rating, correct. 20 Q. Okay. And this form was 21 used in connection with initiating 22 the loan-generating process – 23 originating process; right? 24 A. Yes.</p>
<p style="text-align: center;">143</p> <p>1 Malik dated June 17th, 2004, Bates 2 stamped JH 100 through 105. 3 You prepared the E-mail and 4 the enclosure? 5 A. Yes. 6 Q. And that enclosure is a 7 John Hancock Real Estate Investment 8 Group form? 9 A. Yes. 10 Q. Which is entitled 11 "Preliminary Loan Information 12 Worksheet For Multi-Family 13 Properties"; right? 14 A. Yes. 15 Q. And it's an XLS, meaning an 16 Excel form, that's preformatted; 17 right? 18 MR. DAVIS: Objection. 19 If you can respond. 20 BY MR. SCHER: 21 Q. Is it an Excel form? 22 A. What do you mean 23 "preformatted"? 24 Q. Well, it's got these black</p>	<p style="text-align: center;">145</p> <p>1 Q. Do you recall how you 2 obtained the operating budget for 3 Avenel, the Montgomery Square 4 apartments, which is that – which 5 forms the basis for the Exhibit 1 to 6 the loan application? 7 MR. DAVIS: Objection. 8 THE WITNESS: Not 9 specifically, but I can tell you how 10 I normally do it. 11 BY MR. SCHER: 12 Q. Tell me how you normally do 13 it. 14 A. In this case it came from a 15 broker. It went originally to Scott 16 McIsaac in Boston, who in turn sent 17 it to me. 18 The original would have 19 been prepared by the broker in 20 conjunction with the borrower and 21 then subsequently we would have 22 ironed out the final numbers with the 23 borrower, again, in conjunction with 24 his representative.</p>



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<p>146</p> <p>1 Q. And then ultimately the</p> <p>2 ironed-out numbers would be reflected</p> <p>3 on Exhibit 1 and attached to the loan</p> <p>4 application.</p> <p>5 A. Right. And as best we</p> <p>6 could determine at that time.</p> <p>7 Q. Right.</p> <p>8 (Exhibit Ferrie-6 was</p> <p>9 marked for identification.)</p> <p>10 BY MR. SCHER:</p> <p>11 Q. I'll show you what I've had</p> <p>12 marked as Ferrie Exhibit 6, which is</p> <p>13 an E-mail dated June 18, 2004, Bates</p> <p>14 stamped JH 74 through 77.</p> <p>15 Can you tell me what this</p> <p>16 is?</p> <p>17 A. I could tell you what it</p> <p>18 appears to be. It's unexecuted.</p> <p>19 Q. Okay.</p> <p>20 A. It appears to be a term</p> <p>21 sheet for the Avenel property.</p> <p>22 Q. And you made reference to a</p> <p>23 term sheet earlier in your testimony</p> <p>24 and this is what you were referring</p>	<p>148</p> <p>1 Q. I'll show you what I've had</p> <p>2 marked as Ferrie Exhibit 7. It's a</p> <p>3 document dated June 18th, 2004, Bates</p> <p>4 stamped V, indicating it was produced</p> <p>5 by Vesterra, 1181 through 1188.</p> <p>6 Can you tell me what this</p> <p>7 is?</p> <p>8 A. This appears to be again a</p> <p>9 term sheet with notes on it.</p> <p>10 Q. Okay. Do you recall that</p> <p>11 there was a term sheet executed in</p> <p>12 connection with this transaction?</p> <p>13 A. I don't recall. There may</p> <p>14 have been.</p> <p>15 Q. Okay.</p> <p>16 A. We do it both ways.</p> <p>17 MR. SCHER: Let's mark this</p> <p>18 as the next exhibit.</p> <p>19 (Exhibit Ferrie-8 was</p> <p>20 marked for identification.)</p> <p>21 BY MR. SCHER:</p> <p>22 Q. I'll show you what I've had</p> <p>23 marked as Ferrie Exhibit 8. And</p> <p>24 believe it or not, it's the only copy</p>
<p>147</p> <p>1 to; right?</p> <p>2 A. In what context?</p> <p>3 Q. You referred to the</p> <p>4 existence of a term sheet and --</p> <p>5 A. I did?</p> <p>6 MR. DAVIS: Objection.</p> <p>7 I think earlier in your</p> <p>8 testimony you made some reference to</p> <p>9 a term sheet.</p> <p>10 But you're not saying that</p> <p>11 this is the final term sheet; you're</p> <p>12 just saying that this is a term</p> <p>13 sheet; right?</p> <p>14 MR. SCHER: Right.</p> <p>15 BY MR. SCHER:</p> <p>16 Q. This is a form of a term</p> <p>17 sheet; right?</p> <p>18 A. Yes.</p> <p>19 Q. But since it's not</p> <p>20 executed, it's not the term sheet?</p> <p>21 A. Right.</p> <p>22 (Exhibit Ferrie-7 was</p> <p>23 marked for identification.)</p> <p>24 BY MR. SCHER:</p>	<p>149</p> <p>1 I have, I took it from my own</p> <p>2 notebook, and it is Bates stamped JH</p> <p>3 733 through 737 and it was previously</p> <p>4 marked Koller Exhibit 6 at Mr.</p> <p>5 Koller's deposition.</p> <p>6 Is that the executed term</p> <p>7 sheet?</p> <p>8 A. I don't see my signature,</p> <p>9 so -- it appears to be.</p> <p>10 MR. DAVIS: I don't see the</p> <p>11 date down here. Okay. Thank you.</p> <p>12 (Exhibit Ferrie-9 was</p> <p>13 marked for identification.)</p> <p>14 BY MR. SCHER:</p> <p>15 Q. I'll show you what I've had</p> <p>16 marked as Ferrie Exhibit 9, which is</p> <p>17 a document Bates stamped JH 219,</p> <p>18 appears to be an E-mail from you to</p> <p>19 jkelly@kollerKelly with a carbon copy</p> <p>20 to Rob Kelly and Tim Malik dated July</p> <p>21 29 at 11:25 a.m.</p> <p>22 Do you see that?</p> <p>23 A. Right.</p> <p>24 Q. Could you take a moment and</p>



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<p style="text-align: center;">150</p> <p>1 review it and tell me whether this 2 was your response to the discussion 3 you had with respect to a maximum 4 exposure of 5 percent in the event 5 the loan was not closed? 6 A. Just to make sure I've got 7 the right paragraph. 8 Yes. 9 Q. And you've looked at the 10 loan application and specifically at 11 Paragraph 30 in the application and 12 Condition 69 in the supplement? 13 A. Yes. 14 Q. And essentially you copied 15 the language from Paragraph 30 16 from -- in the application, JH 348, 17 in your E-mail; right? 18 A. You mean did I attach it as 19 a -- 20 Q. No. You copied the 21 language from that paragraph. 22 A. In my E-mail? 23 Q. Yes. In other words, the 24 phrase you use in your E-mail is,</p>	<p style="text-align: center;">152</p> <p>1 A. -- out of that -- you know. 2 May have been, may have not. 3 Q. Well, one of the words is 4 capitalized -- 5 A. Right. 6 Q. -- namely, the word 7 "costs." 8 A. Right. 9 Q. Do you agree that you used 10 the capital C costs because that's 11 what it was in the loan application 12 form? 13 MR. DAVIS: Objection. 14 THE WITNESS: I don't know 15 whether I did or not. 16 BY MR. SCHER: 17 Q. You can't recall? 18 A. Right. 19 Q. One way or the other? 20 A. No. 21 Q. Sitting here today, you 22 don't know whether it was from this 23 form that you found that capital C 24 costs; right?</p>
<p style="text-align: center;">151</p> <p>1 Therefore, you need to deliver the 2 loan or be liable for all, capital C, 3 costs. 4 A. Uh-huh. 5 Q. And in the Paragraph 30 it 6 says -- at the end of that paragraph, 7 it says, you shall -- Borrower shall 8 also continue to remain liable for 9 all costs. Page 348 Bates stamp. 10 A. Uh-huh. 11 Q. At the very end of 12 Paragraph 30. 13 MR. DAVIS: Objection. 14 You can respond. 15 THE WITNESS: Now, which 16 part are you saying is a copy? 17 BY MR. SCHER: 18 Q. The phrase "liable for all 19 Costs." 20 A. I don't know whether it's 21 from there or not, but -- I mean, 22 that's only, one, two, three, four 23 words -- 24 Q. Right.</p>	<p style="text-align: center;">153</p> <p>1 A. I can't tell you for sure. 2 Q. Okay. Do you think so? 3 A. I don't know. 4 Q. I don't want you to 5 speculate, but if you have a reason 6 to believe that you copied this 7 language from Paragraph 30 since you 8 referred to Paragraph 30 in your 9 E-mail, I'd like to know that. 10 A. Well, as I say, it's only 11 three words. I don't know -- or four 12 words. So I don't know whether those 13 four words came out of, you know, 14 some prior, you know, negotiation or 15 whether they came from this 16 paragraph. 17 Q. Okay. And you understand 18 the convention when you use a 19 capitalized term that -- 20 A. Yes. 21 Q. -- that's typically a 22 defined term? 23 A. Right. 24 Q. And did you have any reason</p>



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1 for using a capital C costs there
2 other than that it was referring to a
3 defined term?
4 MR. DAVIS: Objection.
5 It's been asked and answered.
6 But you can respond.
7 THE WITNESS: Yeah. Well,
8 I'm not an attorney. I meant to
9 convey the message that there was a
10 penalty involved if the loan was
11 committed by Hancock and subsequently
12 the borrower did not close.
13 MR. SCHER: Right.
14 BY MR. SCHER:
15 Q. And that penalty was,
16 capital C, costs.
17 A. And that penalty is based
18 on the application, which was
19 subsequently approved.
20 Q. Right.
21 A. So --
22 Q. That's Paragraph 30.
23 A. Yeah. But my letter
24 doesn't override the application.

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1 MR. SCHER: Yes.
2 BY MR. SCHER:
3 Q. Sitting here today, you
4 can't give me any explanation as to
5 why the capital -- there is a capital
6 C in the word "costs" in your
7 E-mail --
8 MR. DAVIS: Objection.
9 BY MR. SCHER:
10 Q. -- March 30, Exhibit 9?
11 MR. DAVIS: Objection.
12 THE WITNESS: Can I answer?
13 MR. DAVIS: You may answer
14 again.
15 THE WITNESS: Okay.
16 What I said was it may have
17 come from this paragraph or it may
18 have come from other prior
19 negotiated, you know, applications
20 that I had dealt with.
21 MR. SCHER: Okay.
22 BY MR. SCHER:
23 Q. Had you had a discussion
24 with Mr. Malik on the subject of the

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1 Q. No. The application -- oh,
2 I understand.
3 A. Right.
4 Q. You're referring to the
5 application in Condition 69 in the
6 application.
7 A. Referring to Paragraph 30.
8 Q. Right.
9 A. And Condition 69.
10 Q. Right.
11 A. Not just those four words.
12 Q. Oh, I understand.
13 Sitting here today, you
14 can't give me any explanation for the
15 capital C costs being listed; right?
16 MR. DAVIS: Objection.
17 Asked and answered.
18 THE WITNESS: Pardon me?
19 MR. DAVIS: Asked and
20 answered.
21 You can respond again.
22 THE WITNESS: I think I've
23 responded already. Would you like me
24 to respond again?

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1 request by the borrower that the
2 exposure be limited to 5 percent?
3 A. I can't recall a specific
4 discussion, but since I am responding
5 to their request to negotiate a 5
6 percent limit to their exposure, I
7 must have had the conversation with
8 him.
9 Q. Okay.
10 A. Because he made that
11 decision.
12 Q. He's shown as a carbon copy
13 recipient on the E-mail, so does that
14 jar your recollection that you did in
15 fact discuss that with him?
16 A. Well, I have no
17 recollection that I verbally
18 discussed it with him, but it would
19 appear that I -- I would have to.
20 Q. Okay.
21 A. Because only Boston makes
22 those decisions, not me.
23 (Exhibit Ferrie-10 was
24 marked for identification.)



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<p style="text-align: center;">158</p> <p>1 BY MR. SCHER:</p> <p>2 Q. I'll show you what's been</p> <p>3 marked as Ferrie Exhibit 10, which is</p> <p>4 a --</p> <p>5 MR. DAVIS: This one is</p> <p>6 already marked.</p> <p>7 THE WITNESS: Okay.</p> <p>8 MR. DAVIS: Let's just get</p> <p>9 these out of your way so we can keep</p> <p>10 the pile straight.</p> <p>11 BY MR. SCHER:</p> <p>12 Q. That's an E-mail from Mr.</p> <p>13 Malik to you dated July 29th, 2004,</p> <p>14 Bates stamped JH 173.</p> <p>15 A. Uh-huh. Right.</p> <p>16 Q. The sentence, Regatta's</p> <p>17 were too low, meaning Need sales</p> <p>18 comps as soon as possible, Regatta's</p> <p>19 were too low, do you have any</p> <p>20 recollection as to what this means?</p> <p>21 A. Yes.</p> <p>22 Q. What is that?</p> <p>23 A. Part of our underwriting</p> <p>24 process is to secure sales</p>	<p style="text-align: center;">160</p> <p>1 order to justify the valuation.</p> <p>2 MR. SCHER: Okay.</p> <p>3 BY MR. SCHER:</p> <p>4 Q. So Regatta's sales prices</p> <p>5 would not be a good comparable to</p> <p>6 justify Avenel's loan application.</p> <p>7 Is that what this is saying?</p> <p>8 A. No. What --</p> <p>9 Q. I don't understand how</p> <p>10 Regatta gets into the picture.</p> <p>11 A. Okay. What Mr. Malik is</p> <p>12 saying is that the sales price for</p> <p>13 Regatta on a per unit basis was lower</p> <p>14 than we were underwriting for Avenel.</p> <p>15 Q. What difference does that</p> <p>16 make?</p> <p>17 A. Well, I mean, you're</p> <p>18 looking at sales price per unit.</p> <p>19 It may have been -- it may</p> <p>20 have been perfectly comparable on a</p> <p>21 square-foot basis, it may have been</p> <p>22 comparable on other bases, but in</p> <p>23 terms of a sales price, he's saying</p> <p>24 that he needed additional</p>
<p style="text-align: center;">159</p> <p>1 comparables. And the sales price for</p> <p>2 Regatta -- I forget what it was --</p> <p>3 was lower than what we were</p> <p>4 underwriting the value of Avenel.</p> <p>5 Q. The sales price for the</p> <p>6 entire complex was lower?</p> <p>7 A. The sales price per unit or</p> <p>8 for the entire complex --</p> <p>9 Q. Doesn't matter.</p> <p>10 A. -- whatever, were lower --</p> <p>11 the actual sales price for Avenel was</p> <p>12 lower than the sales price that was</p> <p>13 indicated by our valuation.</p> <p>14 MR. DAVIS: You said "for</p> <p>15 Avenel." Are you --</p> <p>16 THE WITNESS: Oh, okay.</p> <p>17 MR. DAVIS: Are you meaning</p> <p>18 Regatta?</p> <p>19 THE WITNESS: For Regatta,</p> <p>20 yes. Let me rephrase that.</p> <p>21 The sales price for Regatta</p> <p>22 was lower than the valuation on our</p> <p>23 worksheet for Avenel. So we were</p> <p>24 looking for sales comparables in</p>	<p style="text-align: center;">161</p> <p>1 confirmation from the marketplace.</p> <p>2 Q. So you were using Regatta's</p> <p>3 sales price as a comparable and you</p> <p>4 needed other sales price comparables?</p> <p>5 A. I probably submitted with</p> <p>6 my -- or maybe an original package,</p> <p>7 we had sales prices from several</p> <p>8 complexes.</p> <p>9 Q. One of which was Regatta?</p> <p>10 A. I would guess so since</p> <p>11 that's what he's referring to.</p> <p>12 MR. DAVIS: Don't guess. I</p> <p>13 would ask you not to speculate.</p> <p>14 THE WITNESS: Okay. I'm</p> <p>15 sorry. Okay. All right.</p> <p>16 (Exhibit Ferrie-11 was</p> <p>17 marked for identification.)</p> <p>18 BY MR. SCHER:</p> <p>19 Q. I'll show you what I've</p> <p>20 marked as Ferrie Exhibit 11. It's a</p> <p>21 copy of your E-mail of July 29, 2004,</p> <p>22 from Joe -- to Joe Kelly at Koller</p> <p>23 Kelly showing a carbon copy to Tim</p> <p>24 Malik and Rob Kelly.</p>



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<p>162</p> <p>1 A. Yes.</p> <p>2 Q. Is this your E-mail of July</p> <p>3 29, 2004, enclosing the exhibits to</p> <p>4 which reference is made?</p> <p>5 A. Yes.</p> <p>6 (Exhibit Ferrie-12 was</p> <p>7 marked for identification.)</p> <p>8 BY MR. SCHER:</p> <p>9 Q. I'll show you what I've had</p> <p>10 marked as Ferrie Exhibit 12, which is</p> <p>11 an E-mail stream beginning with a --</p> <p>12 an E-mail from Tim Malik dated July</p> <p>13 30, 2004, at 9:20 a.m. and a</p> <p>14 subsequent E-mail from you to Mr.</p> <p>15 Malik at 10:11 a.m. and then a third</p> <p>16 E-mail from Mr. Malik to you at</p> <p>17 10:22 a.m.</p> <p>18 Do you have that document,</p> <p>19 which is Bates stamped JH 160, in</p> <p>20 front of you?</p> <p>21 A. Yes.</p> <p>22 Q. Can you tell me why you</p> <p>23 referred to the Regatta 6.25 cap and</p> <p>24 sales price of \$58 million?</p>	<p>164</p> <p>1 Q. What did you think?</p> <p>2 MR. DAVIS: Objection.</p> <p>3 THE WITNESS: Don't</p> <p>4 speculate.</p> <p>5 BY MR. SCHER:</p> <p>6 Q. Well, you received this</p> <p>7 E-mail; right?</p> <p>8 A. Right.</p> <p>9 Q. Did you have any</p> <p>10 understanding of what he was trying</p> <p>11 to convey to you?</p> <p>12 A. Sure. We're going through</p> <p>13 the underwriting process and he</p> <p>14 wanted additional comparables in</p> <p>15 order to justify the underwriting.</p> <p>16 Q. Okay. And apparently the</p> <p>17 comparables that you had provided</p> <p>18 him, namely, the Regatta, still</p> <p>19 didn't justify the underwriting;</p> <p>20 right?</p> <p>21 A. Well, they eventually did</p> <p>22 because we got an application which</p> <p>23 was approved by Hancock.</p> <p>24 Q. Right. But Regatta didn't</p>
<p>163</p> <p>1 A. Because the -- one of the</p> <p>2 ways of valuing a property is the</p> <p>3 income approach using the cap rate.</p> <p>4 Q. And Mr. Malik responds to</p> <p>5 that by saying: This is still not</p> <p>6 even up to we have per unit in the</p> <p>7 underwriting.</p> <p>8 A. Right.</p> <p>9 Q. So was Mr. Malik telling</p> <p>10 you that that cap rate did not</p> <p>11 justify the loan amount for Avenel?</p> <p>12 A. He was saying --</p> <p>13 MR. DAVIS: Objection.</p> <p>14 THE WITNESS: Okay.</p> <p>15 MR. DAVIS: I'd caution you</p> <p>16 not to speculate as to what Mr. Malik</p> <p>17 was telling you.</p> <p>18 BY MR. SCHER:</p> <p>19 Q. If you know.</p> <p>20 THE WITNESS: Right.</p> <p>21 Again, I don't know what</p> <p>22 he's telling me. I can tell you what</p> <p>23 I think.</p> <p>24 BY MR. SCHER:</p>	<p>165</p> <p>1 justify it.</p> <p>2 MR. DAVIS: Objection.</p> <p>3 THE WITNESS: We weren't</p> <p>4 underwriting Regatta.</p> <p>5 MR. SCHER: Right.</p> <p>6 BY MR. SCHER:</p> <p>7 Q. But the Regatta comparable</p> <p>8 didn't justify it?</p> <p>9 MR. DAVIS: Objection.</p> <p>10 You can respond.</p> <p>11 THE WITNESS: I don't know</p> <p>12 what the Regatta comp has to do with</p> <p>13 Avenel.</p> <p>14 MR. SCHER: Okay.</p> <p>15 BY MR. SCHER:</p> <p>16 Q. So you don't understand</p> <p>17 what Mr. Malik's reference is.</p> <p>18 A. No. I told you what his</p> <p>19 reference was. Our -- no. Let me --</p> <p>20 no, I don't.</p> <p>21 Q. Okay.</p> <p>22 (Exhibit Ferrie-13 was</p> <p>23 marked for identification.)</p> <p>24 BY MR. SCHER:</p>



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1 Q. I'll show you what I've
2 marked as Ferrie Exhibit 13. It's
3 an E-mail stream which begins with
4 a -- an E-mail from Kevin Collins to
5 you --
6 A. Uh-huh.
7 Q. -- of July 30 at 9:56 a.m.
8 followed by your forwarding it to Mr.
9 Malik and then an E-mail from Mr.
10 Malik to you at 10:20 a.m. regarding
11 Avenel sales comps.
12 Can you explain to me
13 what -- when Mr. Malik says, I now
14 have doubts about the projected NOI
15 at Avenel, do you know to what he's
16 making reference?
17 A. I can only speculate.
18 Q. When you received it, did
19 you tell him you didn't understand
20 what he was talking about?
21 A. No.
22 Q. Okay. Did you understand?
23 Did you have an understanding of what
24 he was talking about when you

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1 In this E-mail from Mr.
2 Malik to you the -- he's telling you
3 that the Letter of Credit should be
4 longer than a year, since that would
5 force us to cash if -- early if they
6 can't close by August 2nd, 2004.
7 Were you contemplating
8 drawing down on a Letter of Credit
9 before the loan was approved?
10 MR. DAVIS: Objection.
11 You can respond.
12 THE WITNESS: No. I mean,
13 there was a -- typically, we have a
14 Letter of Credit that extends 60 to
15 90 days beyond the term of the
16 forward.
17 So in the case of one year,
18 it should have been one year and 60
19 days or one year and 90 days. So
20 when the -- Tim was commenting on
21 that fact.
22 MR. SCHER: Okay.
23 BY MR. SCHER:
24 Q. And was that accomplished?

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1 received it?
2 A. I knew what I was going to
3 do.
4 Q. What would you do? What
5 did you do as a result of this?
6 A. Attempt to justify the
7 valuation or look for sales comps to
8 justify the valuation.
9 Q. And evidently, you did
10 succeed in doing that because the
11 loan application was approved.
12 A. No. Evidently because the
13 property sold for far in excess of
14 what we valued it at.
15 Q. Right.
16 A. That's the proof of the
17 pudding.
18 Q. That's the proof.
19 (Exhibit Ferrie-14 was
20 marked for identification.)
21 BY MR. SCHER:
22 Q. I'll show you what I've had
23 marked as Ferrie Exhibit 14, which is
24 a document Bates stamped JH 140.

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1 A. I haven't -- I don't have
2 the Letter of Credit here. I can --
3 you know, if I could look at it, I
4 can tell you.
5 Q. Okay.
6 (Exhibit Ferrie-15 was
7 marked for identification.)
8 BY MR. SCHER:
9 Q. I'll show you what I've had
10 marked as Ferrie Exhibit 15, a copy
11 of a document Bates stamped JH 397
12 through 404. The first page is an
13 interest rate circle form and appears
14 to be signed by Barry Neclow.
15 Do you know who he is?
16 A. Barry Neclow?
17 Q. Yes.
18 A. Yes.
19 Q. Who's he?
20 A. He's no longer with the
21 company.
22 Q. Okay.
23 A. He was the -- he was one of
24 the senior officers.



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1 Q. And was he a John Hancock
2 person rather than a Manulife person?
3 A. Yes.
4 Q. And is this the standard
5 form by which the interest rate is
6 locked?
7 A. I don't have anything to do
8 with it.
9 Q. Okay. Well, you say
10 nothing to do with it, but JH 403 and
11 404, you signed that Exhibit D?
12 A. 403.
13 Q. Oh. I'm sorry. Tim Malik.
14 I'm sorry. I apologize.
15 Did you participate in the
16 transmission of this rate lock form
17 to John Hancock from Mr. Koller?
18 A. You mean 403 and 404?
19 Q. Yes, sir.
20 A. I can't recall
21 definitively. Either I would have
22 transmitted or it would have been
23 sent directly by Jim and Joe.
24 Q. Okay. And this is -- and

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1 loan.
2 A. I --
3 Q. The requirement for the
4 disbursement of a loan.
5 MR. DAVIS: Don't
6 speculate. If you know.
7 THE WITNESS: No, I don't
8 know.
9 MR. SCHER: Okay. Let me
10 see if I can help.
11 (Exhibit Ferrie-16 was
12 marked for identification.)
13 BY MR. SCHER:
14 Q. I'll show you what's been
15 marked as Ferrie Exhibit 16, which is
16 a document Bates stamped 405 through
17 425. And my question is directed to
18 the first page where it says
19 "specific conditions," that box.
20 Do you see where I'm
21 referring?
22 A. Yes. Uh-huh.
23 Q. And then the first bold is
24 principal affiliates requirements,

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1 when this form was sent in, that's
2 when the hedge was created?
3 MR. DAVIS: Objection.
4 THE WITNESS: I don't --
5 MR. DAVIS: Objection.
6 Don't speculate, please.
7 THE WITNESS: Okay.
8 I don't know anything about
9 it.
10 MR. SCHER: Okay.
11 BY MR. SCHER:
12 Q. Do you know what a 10
13 percent break-even requirement is?
14 A. 10 percent -- in what
15 context?
16 Q. In the context of a loan
17 application.
18 A. 10 percent break -- I --
19 Q. Have you ever heard that
20 criteria as an underwriting criteria
21 for a John Hancock loan?
22 A. I need to know what context
23 it was in.
24 Q. Context of an approval of a

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1 guarantee requirements, the third is
2 funding, and the fourth is
3 disbursement requirements.
4 Do you see that?
5 A. Yes.
6 Q. And then it lists rents of
7 at least \$4,221,126; right?
8 A. Right.
9 Q. Plus other income.
10 And then it says, a minimum
11 NCFDSCR of 1.25 to 1. That's the
12 debt service coverage ratio --
13 A. Uh-huh.
14 Q. -- to which -- which is
15 contained in the loan application;
16 right?
17 A. Right.
18 Q. And then it says: 10
19 percent break-even, according to
20 underwriting herein.
21 What does that mean?
22 A. That would be the same
23 thing you referred to earlier as the
24 10 percent constant.



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<p style="text-align: center;">174</p> <p>1 Q. I see.</p> <p>2 And then the next criteria</p> <p>3 indicated is the possibility of a</p> <p>4 rent achievement reserve subject to</p> <p>5 the 75 percent LTV and 1.25 to 1 DSCR</p> <p>6 as described in the commitment.</p> <p>7 So that's the -- those are</p> <p>8 the two criteria that are contained</p> <p>9 in the loan application; right? The</p> <p>10 LTV and the DSCR.</p> <p>11 A. They are two of the</p> <p>12 criteria. Yes.</p> <p>13 Q. Yes. Okay.</p> <p>14 (Exhibit Ferrie-17 was</p> <p>15 marked for identification.)</p> <p>16 BY MR. SCHER:</p> <p>17 Q. I'll show you what I've had</p> <p>18 marked as Ferrie Exhibit 17. And</p> <p>19 it's a document that's Bates stamped</p> <p>20 JH 01174.</p> <p>21 First, have you ever before</p> <p>22 today seen JH 16, the last one I</p> <p>23 showed you, or JH 17?</p> <p>24 A. I don't have any</p>	<p style="text-align: center;">176</p> <p>1 MR. DAVIS: Objection.</p> <p>2 THE WITNESS: Yes.</p> <p>3 MR. SCHER: Okay.</p> <p>4 (Exhibit Ferrie-18 was</p> <p>5 marked for identification.)</p> <p>6 BY MR. SCHER:</p> <p>7 Q. I'll show you what I've had</p> <p>8 marked as Ferrie Exhibit 18. It's a</p> <p>9 document from the -- E-mail stream.</p> <p>10 The first is an E-mail from</p> <p>11 you to Mr. Malik with a carbon copy</p> <p>12 to Tom Rogers at White and Williams,</p> <p>13 a man named Depolis -- your</p> <p>14 colleagues, Brian Depolis and Helene</p> <p>15 McCole; am I right about that?</p> <p>16 A. Can you repeat the</p> <p>17 question?</p> <p>18 Q. Yes.</p> <p>19 Basically, I was</p> <p>20 identifying that E-mail from you.</p> <p>21 And it is from you to Tim Malik with</p> <p>22 copies to Tom Rogers, who is your</p> <p>23 lawyer at White and Williams, and</p> <p>24 your two colleagues in your office.</p>
<p style="text-align: center;">175</p> <p>1 independent recollection. No.</p> <p>2 Q. Okay. And -- Ferrie-16 or</p> <p>3 Ferrie-17. I misspoke. It just --</p> <p>4 A. This one?</p> <p>5 Q. Right.</p> <p>6 A. Yeah.</p> <p>7 Q. You have never seen that</p> <p>8 before -- you don't --</p> <p>9 A. I don't remember. I could</p> <p>10 have.</p> <p>11 Q. And you don't remember</p> <p>12 seeing this one before?</p> <p>13 A. No.</p> <p>14 Again, I could have; I just</p> <p>15 don't remember.</p> <p>16 Q. And you see Item 8 of this</p> <p>17 August 17 --</p> <p>18 A. Yes.</p> <p>19 Q. -- 2004 memorandum --</p> <p>20 A. Uh-huh.</p> <p>21 Q. -- references that 10</p> <p>22 percent break-even and that's the 10</p> <p>23 percent constant to which we've made</p> <p>24 reference earlier; am I right?</p>	<p style="text-align: center;">177</p> <p>1 A. Yes.</p> <p>2 Q. Brian Depolis and Helene</p> <p>3 McCaan -- McCole.</p> <p>4 A. McCole. Yes.</p> <p>5 Q. Right. Okay.</p> <p>6 Now, in this you are</p> <p>7 reporting a lunch with Mr. Kelly and</p> <p>8 Mr. Koller; am I right?</p> <p>9 A. Yes.</p> <p>10 Q. And they paid for lunch?</p> <p>11 A. Exactly. Yes.</p> <p>12 Q. Now, do you remember where</p> <p>13 that lunch was?</p> <p>14 A. Myrna's.</p> <p>15 Q. Okay. Take a moment and</p> <p>16 review this E-mail and tell me if you</p> <p>17 have any other recollection of the --</p> <p>18 what transpired at that lunch.</p> <p>19 A. It's a long time ago. I</p> <p>20 don't remember anything specifically.</p> <p>21 Q. Okay. Is there anything in</p> <p>22 this E-mail which you regard as</p> <p>23 inaccurate in retrospect?</p> <p>24 MR. DAVIS: Take a moment</p>



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1 and read it, please.
2 THE WITNESS: Uh-huh.
3 BY MR. SCHER:
4 Q. Public school for his kids?
5 Is that what you --
6 A. Yeah. Uh-huh.
7 Is anything -- what was the
8 last question?
9 Q. Is there anything in that
10 E-mail which in retrospect you
11 believe is inaccurate or incomplete?
12 A. No.
13 Q. Mr. Malik forwarded it to
14 Messrs: Roseen and Neclow.
15 Do you know who they are?
16 A. Tim Roseen is in the -- the
17 head of the credit department.
18 Q. Okay.
19 A. And Barry Neclow was the --
20 whatever his title was -- debt
21 investment manager.
22 Q. Okay. Do you know why Mr.
23 Malik communicated with Mr. Roseen
24 and Mr. Neclow in connection with the

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1 MR. DAVIS: Asked and
2 answered.
3 BY MR. SCHER:
4 Q. You can answer it again.
5 A. No.
6 (Exhibit Ferrie-19 was
7 marked for identification.)
8 BY MR. SCHER:
9 Q. I'll show you what I've had
10 marked Ferrie Exhibit 18, which is a
11 copy of --
12 MR. DAVIS: 19, I think.
13 MR. SCHER: I'm sorry. Is
14 it 19? I apologize.
15 BY MR. SCHER:
16 Q. -- 19, which is a copy of
17 an E-mail from you to Joe Kelly with
18 a carbon copy to Jim Koller and Tim
19 Malik on the subject of Avenel unwind
20 costs.
21 Is this your E-mail of June
22 7 -- June 6, 2005, at 11:27 a.m.?
23 A. Yes.
24 (Exhibit Ferrie-20 was

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1 subject of your E-mail?
2 A. No.
3 Q. What's the process through
4 which John Hancock goes in the event
5 a loan to which the company has
6 committed has decided not to proceed
7 with the loan?
8 A. Well, in my 16 years with
9 Hancock and the two and a half years
10 before that with Fidelity Bond &
11 Mortgage, the only two loans that
12 never closed were Avenel, which was a
13 negotiated settlement, and -- I mean
14 Regatta.
15 Q. Which was a --
16 A. Which was a negotiated
17 settlement, and Avenel.
18 Q. Okay. Do you know why
19 Regatta was not asked to pay the old
20 maintenance penalty?
21 MR. DAVIS: Objection.
22 I think we've covered this
23 earlier today.
24 MR. SCHER: Okay.

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1 marked for identification.)
2 BY MR. SCHER:
3 Q. This is Ferrie Exhibit 20,
4 a copy of an E-mail from Mr. Koller
5 to you, which is the E-mail stream
6 which began with your E-mail, Bates
7 stamped JH 149.
8 Did you ever explain to Mr.
9 Koller what the \$86,000 hedge cost
10 was?
11 A. No.
12 Q. Do you know what it was?
13 A. No. But I didn't make it
14 up. It came from Hancock.
15 Q. Okay.
16 (Exhibit Ferrie-21 was
17 marked for identification.)
18 BY MR. SCHER:
19 Q. I'll show you what I've had
20 marked Ferrie Exhibit 21, which is an
21 E-mail, the first page of which is JH
22 01196.
23 Is that your E-mail to
24 Tim Malik with a copy to Jessica



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<p style="text-align: center;">182</p> <p>1 Leveroni --</p> <p>2 A. Yes.</p> <p>3 Q. -- and Tom Rogers?</p> <p>4 And those two are lawyers;</p> <p>5 am I right?</p> <p>6 A. Yes.</p> <p>7 Q. Jessica is in house and --</p> <p>8 A. Tom is out house.</p> <p>9 Q. -- Tom Rogers is out house;</p> <p>10 is that right?</p> <p>11 A. Yes.</p> <p>12 MR. DAVIS: I'm going to</p> <p>13 object to that characterization of</p> <p>14 "out house."</p> <p>15 BY MR. SCHER:</p> <p>16 Q. And that's your E-mail; am</p> <p>17 I right? You wrote that?</p> <p>18 A. Of June the 9th. Yes.</p> <p>19 Q. Yes. Okay.</p> <p>20 Is it accurate to say that</p> <p>21 you negotiated the terms of the loan</p> <p>22 commitment -- the loan application</p> <p>23 with the prospective borrower?</p> <p>24 A. No.</p>	<p style="text-align: center;">184</p> <p>1 Q. Are you familiar with the</p> <p>2 interpretation of the loan</p> <p>3 application, the language contained</p> <p>4 in the loan application?</p> <p>5 MR. DAVIS: Objection.</p> <p>6 You can respond.</p> <p>7 THE WITNESS: I don't</p> <p>8 follow.</p> <p>9 BY MR. SCHER:</p> <p>10 Q. Are you able to interpret</p> <p>11 the meaning of the language in the</p> <p>12 loan application?</p> <p>13 MR. DAVIS: Objection.</p> <p>14 I think you're asking him</p> <p>15 for a legal opinion, but, you know.</p> <p>16 You're asking whether he's capable of</p> <p>17 rendering a legal opinion. I object.</p> <p>18 THE WITNESS: I know what's</p> <p>19 in the loan application.</p> <p>20 BY MR. SCHER:</p> <p>21 Q. You can't interpret it,</p> <p>22 though, can you?</p> <p>23 A. If there's --</p> <p>24 MR. DAVIS: Objection.</p>
<p style="text-align: center;">183</p> <p>1 Q. Who did?</p> <p>2 A. I conveyed the -- other</p> <p>3 than the boilerplate, I conveyed the</p> <p>4 requests from the borrower to home</p> <p>5 office and home office subsequently</p> <p>6 decided.</p> <p>7 Q. Earlier in your testimony</p> <p>8 you described yourself as a</p> <p>9 go-between. Is that what you meant?</p> <p>10 A. Yes. Right. Yeah.</p> <p>11 Q. So you took the information</p> <p>12 that the borrower conveyed to you,</p> <p>13 passed it on to Boston home office,</p> <p>14 John Hancock, and then received their</p> <p>15 response and passed it back to the</p> <p>16 borrower; is that right?</p> <p>17 A. Right. For example, when</p> <p>18 the borrower asked for rather than</p> <p>19 three one-month extensions, six</p> <p>20 one-month extensions, I either</p> <p>21 verbally or written would communicate</p> <p>22 that with Boston and they would tell</p> <p>23 me whether they would be able to go</p> <p>24 for that or not.</p>	<p style="text-align: center;">185</p> <p>1 You can respond.</p> <p>2 THE WITNESS: I would be</p> <p>3 uncomfortable in answering that</p> <p>4 question.</p> <p>5 MR. SCHER: Okay.</p> <p>6 BY MR. SCHER:</p> <p>7 Q. You would be uncomfortable</p> <p>8 in interpreting the loan application;</p> <p>9 right?</p> <p>10 MR. DAVIS: Objection.</p> <p>11 THE WITNESS: No. I would</p> <p>12 be uncomfortable in telling you that</p> <p>13 I can interpret the entire loan</p> <p>14 application.</p> <p>15 MR. SCHER: Okay.</p> <p>16 THE WITNESS: I mean, if</p> <p>17 something says 360-month</p> <p>18 amortization, I can tell you that's</p> <p>19 what it means.</p> <p>20 MR. SCHER: No problem.</p> <p>21 Right.</p> <p>22 BY MR. SCHER:</p> <p>23 Q. To the best of your</p> <p>24 knowledge, how did Vesterra fail to</p>



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<p>186</p> <p>1 fulfill its obligations under the 2 loan commitment? 3 A. They didn't close. 4 Q. And how did it default on 5 the loan commitment? 6 A. The deadline passed and 7 they didn't close. In spite of 8 repeated efforts to get third parties 9 ordered, they never responded. 10 Q. How did -- how was John 11 Hancock damaged as a result of what 12 happened in this case? 13 MR. DAVIS: Objection. 14 You're asking his 15 understanding? 16 MR. SCHER: Yes. 17 THE WITNESS: We committed 18 funds, we were prepared to honor our 19 commitment, and the borrower should 20 have honored his commitment. 21 BY MR. SCHER: 22 Q. Well, how were you damaged? 23 How did -- what -- 24 A. You're talking about</p>	<p>188</p> <p>1 Q. Well, you might call it -- 2 I'm assuming that your answer is they 3 reported everything to me? 4 But I -- if you know of 5 something that they didn't report to 6 you that you've subsequently learned 7 they hadn't reported to you that they 8 had agreed that Avenel's loss damages 9 would be limited to, you know, the 10 hedge loss or something. 11 A. Can I rephrase it -- 12 Q. Yes. 13 A. -- and see if you agree? 14 Q. Go ahead. 15 A. Is there anything unusual 16 about this process that they 17 subsequently reported to me? 18 Q. Correct. 19 A. No. 20 Q. Okay. Turning back to 21 the -- 22 MR. DAVIS: Which one? 23 MR. SCHER: The last 24 document.</p>
<p>187</p> <p>1 dollars and cents? 2 Q. Yes. 3 A. I don't know. You'd have 4 to cover that with Boston. 5 Q. Did Brian Depolis report to 6 you? 7 A. Yes. 8 Q. And did Helene McCole 9 report to you? 10 A. Yes. 11 Q. Are you aware of anything 12 they did in connection with this loan 13 that they did not report to you? 14 In other words, 15 subsequently learn that they had done 16 something or not done something in 17 connection with the loan, that they 18 hadn't reported to you 19 contemporaneous with the events? 20 MR. DAVIS: If you 21 understand, you can respond. 22 THE WITNESS: I think it's 23 kind of broad. 24 BY MR. SCHER:</p>	<p>189</p> <p>1 MR. DAVIS: 21? 2 MR. SCHER: Yes. 3 THE WITNESS: 21? 4 MR. SCHER: 21. 5 BY MR. SCHER: 6 Q. Where did you get that 7 information contained in the first 8 paragraph, The application is under 9 Massachusetts law and provides for 10 the collection of the following 11 amounts, end of quote? 12 A. That's probably from the 13 application. Oh, I shouldn't say 14 probably. 15 I can't say for sure. I 16 believe it's from the application. 17 Q. Where did you get the 18 information that the yield 19 maintenance penalty would be 20 \$5,600,000? 21 A. From Tim Malik. 22 Q. And the hedge costs would 23 be 86,000. 24 A. From Tim.</p>



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<p style="text-align: center;">190</p> <p>1 Q. And the payment of</p> <p>2 third-party costs?</p> <p>3 A. Well, there aren't any</p> <p>4 costs.</p> <p>5 Q. Okay. And the --</p> <p>6 A. They never ordered any</p> <p>7 reports.</p> <p>8 Q. Okay. So do you know where</p> <p>9 Tim got those hedge and yield</p> <p>10 maintenance costs?</p> <p>11 A. No.</p> <p>12 MR. SCHER: Let's take a</p> <p>13 short break.</p> <p>14 (Recess, 2:08-2:19 p.m.)</p> <p>15 BY MR. SCHER:</p> <p>16 Q. I'd like you to take a look</p> <p>17 at Ferrie Exhibit 20 again, which is</p> <p>18 your June 9 E-mail. That's it. I</p> <p>19 think you have it in your --</p> <p>20 MR. DAVIS: It's one page.</p> <p>21 MR. SCHER: Top page. Yes.</p> <p>22 THE WITNESS: This is 21.</p> <p>23 MR. DAVIS: This is 21.</p> <p>24 Look at the E-mail.</p>	<p style="text-align: center;">192</p> <p>1 case for the difference between the</p> <p>2 committed rate and the current market</p> <p>3 rate but that would only be about 1</p> <p>4 percent per year.</p> <p>5 A. Right. That's Jim.</p> <p>6 Q. That's Jim saying that?</p> <p>7 A. Uh-huh.</p> <p>8 MR. SCHER: Okay. I have</p> <p>9 no other questions.</p> <p>10 MR. DAVIS: I have no</p> <p>11 questions.</p> <p>12 MR. SCHER: Could you</p> <p>13 change that uh-huh to a yes?</p> <p>14 THE WITNESS: Yes. Sorry.</p> <p>15 MR. DAVIS: Most</p> <p>16 definitely, you can change it.</p> <p>17 MR. SCHER: All right.</p> <p>18 (Whereupon the deposition</p> <p>19 concluded at 2:20 p.m.)</p> <p>20 TESTIMONY CLOSED</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: center;">191</p> <p>1 MR. SCHER: Oh, I'm sorry.</p> <p>2 It is 21. It is 21. It is.</p> <p>3 MR. DAVIS: It is one page.</p> <p>4 MR. SCHER: No. It's 21.</p> <p>5 THE WITNESS: That's 21.</p> <p>6 Okay.</p> <p>7 MR. DAVIS: Oh, you want</p> <p>8 him to look at 21.</p> <p>9 MR. SCHER: Yes. I want</p> <p>10 him to look at 21.</p> <p>11 BY MR. SCHER:</p> <p>12 Q. And that's JH 1196?</p> <p>13 MR. DAVIS: Yes?</p> <p>14 THE WITNESS: Yes.</p> <p>15 MR. SCHER: Okay.</p> <p>16 BY MR. SCHER:</p> <p>17 Q. If you look down the page,</p> <p>18 it says: Jim said he had reviewed</p> <p>19 the application?</p> <p>20 A. Right.</p> <p>21 Q. And then it goes, He</p> <p>22 further stated -- he stated and he,</p> <p>23 he, and then there's a sentence that</p> <p>24 begins: Maybe Hancock could make a</p>	<p style="text-align: center;">193</p> <p>1 WITNESS CERTIFICATION</p> <p>2</p> <p>3 I hereby certify that I</p> <p>4 have read the foregoing transcript of</p> <p>5 my deposition testimony, and that my</p> <p>6 answers to the questions propounded,</p> <p>7 with the attached corrections or</p> <p>8 changes, if any, are true and</p> <p>9 correct.</p> <p>10</p> <p>11</p> <p>12</p> <p>13 DATE JOHN PATRICK FERRIE</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 PRINTED NAME</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>



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4 UNITED STATES DISTRICT COURT
5 FOR THE DISTRICT OF MASSACHUSETTS

6 JOHN HANCOCK LIFE)
7 INSURANCE COMPANY,)
8 Plaintiff/Counterclaim)
9 Defendant,) Case No.
10 VS.) 05-11614-WGY
11 VESTMONT LIMITED)
12 PARTNERSHIP, ET AL.,)
13 Defendants/Counterclaim)
14 Plaintiffs.)

15 30(b)(6) DEPOSITION OF JOHN HANCOCK LIFE
16 INSURANCE COMPANY by DAVID B. HENDERSON, a
17 witness called by and on behalf of the
18 Defendants, taken pursuant to the applicable
19 provisions of the Federal Rules of Civil
20 Procedure, before Sandra L. Bray, Registered
21 Diplomat Reporter, CSR Number 103593, and
22 Notary Public in and for Commonwealth of
23 Massachusetts, at the offices of Deutsch
24 Williams Brooks DeRensis & Holland, P.C.,
99 Summer Street, Boston, Massachusetts, on
Wednesday, March 1, 2006, commencing at
9:03 a.m.

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1 APPEARANCES:

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for the Defendants
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1 P R O C E E D I N G S

2 (The Massachusetts driver's license
3 number as identification of the deponent
4 was noted for the record.)

5 DAVID B. HENDERSON, having duly sworn
6 or affirmed that his testimony would be the
7 truth, the whole truth, and nothing but the
8 truth, testified as follows:

9 * * *

10 EXAMINATION BY MR. SCHER:

11 Q. Good morning, Mr. Henderson. We've formally
12 introduced ourselves. I've informally
13 introduced myself to you, and you've introduced
14 yourself to me. I represent Vesteria
15 Corporation and the other Defendants in this
16 lawsuit for which you have been noticed as a
17 deponent. You understand that?

18 A. I do.

19 MR. SCHER: Let's just mark this --
20 we're marking with the witness' name, so
21 Henderson 1.

22 (Amended Notice of Deposition was marked
23 Exhibit Number 1 for identification.)

24 Q. Mr. Henderson, I'll show you what's been marked

1 as Henderson Exhibit 1. It's a notice of your
 2 deposition. And you are here today represented
 3 by counsel for John Hancock. Am I right about
 4 that?
 5 A. Correct.
 6 Q. And what compensation have you received for
 7 testifying here today?
 8 A. None.
 9 Q. Do you have any agreement with John Hancock to
 10 reimburse you for your time or expenses with
 11 respect to your appearing here today or anything
 12 else in connection with this lawsuit?
 13 A. None.
 14 Q. When were you last employed by John Hancock?
 15 A. I believe my employment terminated on
 16 February 28th, '05.
 17 Q. And after February 28, '05, did you have any
 18 role whatsoever in connection with John Hancock?
 19 A. None whatsoever.
 20 Q. What did you do when you left in February of
 21 '05?
 22 A. I took a week off and then began employment one
 23 week later with General Electric Real Estate
 24 here in Boston.

1 Q. And are you currently employed by General
 2 Electric Real Estate in Boston?
 3 A. I am.
 4 Q. And what are your duties and responsibilities
 5 for General Electric Real Estate?
 6 A. My title is senior vice president. The
 7 functional responsibility is business
 8 development manager, which means that I am
 9 charged with finding investment opportunities
 10 for GE Real Estate involving acquiring
 11 companies, investing in companies, and doing
 12 joint venture investment with companies.
 13 Q. When you left the John Hancock, you were a
 14 senior investment officer?
 15 A. That was my title, I believe.
 16 Q. And Tim Malik reported to you?
 17 A. Correct.
 18 Q. And what were your duties and responsibilities
 19 as senior investment -- what were your duties
 20 and responsibilities at the time you left John
 21 Hancock?
 22 A. I managed a team of underwriters, including Tim
 23 Malik, as well as managed a team of originators
 24 in field offices -- five field offices in the

1 eastern half of the United States.
 2 Q. One of those field offices was the office
 3 outside of Philadelphia; is that right?
 4 A. Correct.
 5 Q. And John Ferrie's office was within your
 6 jurisdiction, the head of that office?
 7 A. Yes.

8 MR. POPEO: Howard, if we pick up too
 9 much speed, would you mind if I just put on the
 10 record that I have in front of me a notice of
 11 Rule 30(b)(6) deposition which was served upon
 12 us by Vesterra Limited Partnership, et al., and
 13 I'll note for the record that this witness will
 14 be John Hancock's corporate designee with
 15 respect to Topic 1, Topic 3, and Topic 4 of that
 16 notice.

17 MR. SCHER: Let's just put it on the
 18 record. Let's mark this the next one, if you
 19 don't mind.

20 MR. POPEO: Let me also do a little
 21 carve-out. Topic 3 of the notice of deposition
 22 applies to -- by its terms, to certain events
 23 and practices which occurred before April 28,
 24 2004. This witness will speak to those

1 practices and events. The notice also
 2 contemplates the witness will testify to that
 3 same topic subsequent to April 28th, 2004, and
 4 we will designate a separate witness for that
 5 portion of the testimony.
 6 (Defendants' Notice of Rule 30(b)(6)
 7 Videotape Deposition of Plaintiff John
 8 Hancock Life Insurance Company was
 9 marked Exhibit Number 2 for
 10 identification.)
 11 Q. I'll show you what I've had marked as Henderson
 12 Exhibit Number 2, and that is the notice to
 13 which your counsel just made reference, our
 14 notice -- that is, Defendants' notice of a
 15 30(b)(6) videotaped deposition. We're not
 16 videotaping, and it indicates that there are
 17 multiple topics in that deposition notice. If
 18 you wouldn't mind just turning to Page 1 -- the
 19 second page of the -- third page of the notice,
 20 which is Exhibit A. And Topic Number 1 is the
 21 decision by John Hancock to accept the loan
 22 application referenced in Paragraph 10 of the
 23 complaint, including all of the factors,
 24 requirements, and guidelines that were involved

1 in John Hancock's internal consideration of the
2 loan application.
3 You've been designated by John Hancock
4 Corporation as its corporate designee on that
5 topic. Are you aware of that?
6 A. I am.
7 Q. What have you done to prepare for your testimony
8 on that topic?
9 A. Nothing in particular.
10 Q. Nothing at all?
11 A. My memory is pretty good. I remember how we
12 processed loans, what the policies and
13 procedures were.
14 Q. Okay. The Loan Application is capitalized. You
15 see that?
16 A. I do.
17 Q. That makes specific reference to Definition 2 in
18 Exhibit A, which is the loan application to John
19 Hancock Life Insurance Company for a first
20 mortgage loan, Application Number 6518467 by
21 applicant Montgomery Square Partnership, dated
22 July 30, 2004. And you've been designated as
23 the corporate designee on that subject; is that
24 right?

10

1 A. Which paragraph is that again? I'm sorry.
2 Q. You see the words "loan application" are
3 capitalized in Topic 1?
4 A. Yes.
5 Q. And if you want to see what the definition of
6 that capitalized term is, you'd look above, and
7 you'd see the definition for Item 2 is loan
8 application; and that refers to the specific
9 loan application involved in this case. Do you
10 understand that?
11 A. I understand. I do.
12 Q. And is your testimony that you have done nothing
13 to prepare for your testimony as a 30(b)(6)
14 designee on that topic?
15 MR. POPEO: Independent from any
16 meeting which he may have had with counsel prior
17 to the time he had to show up for this
18 deposition?
19 MR. SCHER: I didn't ask you to
20 condition his testimony. If you have an
21 objection, you can state an objection.
22 Q. But please, I want to know what you've done for
23 your testifying as a 30(b)(6) designee on Topic
24 Number 1, and you said nothing other than

1 relying on your memory. Then I asked you what
2 about with respect to this very loan
3 application, are you relying on your memory as
4 the 30(b)(6) designee. That's all I want to
5 know.
6 A. I met with my counsel this past Friday afternoon
7 to talk briefly about this deposition today, but
8 I did not do anything further than have a
9 general conversation about what would transpire
10 today.
11 Q. Okay. In that general conversation, were
12 documents reviewed?
13 A. They were.
14 Q. What documents were reviewed in preparation for
15 your 30(b)(6) testimony?
16 A. I briefly looked at the underwriting document,
17 the loan application, and I can't recall
18 specifically what the others were.
19 Q. So you recall looking at the underwriting
20 document and the loan application or is that one
21 and the same?
22 A. They're not the same.
23 Q. Okay. So the underwriting document and the loan
24 application?

12

1 A. Correct.
2 Q. And it's your testimony you can't recall
3 reviewing any other document, but there were
4 other documents you reviewed?
5 A. There were.
6 Q. I'd like to know what you did to prepare for
7 your testimony as a 30(b)(6) designee. Have you
8 reported to me all you can recall you've done as
9 a 30(b)(6) designee on Topic Number 1?
10 A. Correct.
11 Q. Let's turn to Topic Number 3 on which you have
12 now been designated the corporate designee for
13 all but the last part of that designation, the
14 topic. So the topic for which you have been
15 designated is the policies, guidelines,
16 requirements, targets, practices, processes or
17 methods that apply to the making of mortgage
18 loans by John Hancock and any differences in any
19 of the foregoing before April 28, 2004.
20 Now, your counsel has told me that
21 you're not going to report on the after
22 April 28, 2004. So I'm not sure what you're
23 going to report on. What have you done to
24 prepare for Topic 3?

1 A. I've not done anything in particular other than
 2 have the conversation with my counsel on Friday
 3 afternoon.
 4 Q. Okay. What was the duration of that
 5 conversation?
 6 A. It was, I want to say, 90 minutes approximately.
 7 Q. Basically, you reviewed the deposition
 8 process --
 9 A. Correct.
 10 Q. -- do I have that right? And you reviewed more
 11 than two documents?
 12 A. Correct.
 13 Q. Can you approximate? Was it six documents or
 14 600 documents?
 15 A. It was a binder full of documents that we
 16 briefly went through.
 17 Q. About how much time was spent on reviewing those
 18 documents?
 19 A. I don't recall. Fifteen, twenty minutes.
 20 Q. Among those documents, were there any documents
 21 relating to the policies, guidelines,
 22 requirements, targets, practices, processes or
 23 methods that applied to the making of mortgage
 24 loans by John Hancock before April 28, 2004?

1 A. I don't recall seeing any documents like that.
 2 However, I lived with those processes,
 3 procedures for seven years. It was my
 4 responsibility for seven years. I didn't feel a
 5 need to review them.
 6 Q. Okay. But to answer my question -- and I
 7 appreciate your helping me out on that. To
 8 answer my question, you did not review any
 9 documents on Topic 3? Instead, you're relying
 10 on your memory of seven years of familiarity
 11 with those processes, correct?
 12 MR. POPEO: Objection.
 13 Mischaracterizes the answer, but you can answer
 14 it again.
 15 Q. If I mischaracterized, please correct me.
 16 MR. POPEO: He testified he did not
 17 recall if those documents were in the binder,
 18 but you can answer.
 19 A. I don't recall whether the documents were in the
 20 binder, but I'm comfortable relying on my
 21 memory.
 22 Q. And what -- can you describe the policies,
 23 guidelines, requirements, targets, practices,
 24 processes or methods that applied to the making

1 of mortgage loans by John Hancock? Can you
 2 describe what those documents look like?
 3 MR. POPEO: Objection.
 4 A. I can because there was a manual of guidelines
 5 that we all used day to day, and I referred to
 6 them often in my work at John Hancock over the
 7 course of seven years.
 8 Q. This manual of guidelines, it was in a binder?
 9 A. Yes, I kept mine in a binder. I assume most
 10 people did.
 11 Q. And it was revised from time to time? Revised
 12 and updated from time to time?
 13 A. Yes, it was.
 14 Q. So there'd be inserts added to it from time to
 15 time; is that right?
 16 A. Yes.
 17 Q. And it was updated up to the time that ManuLife
 18 acquired John Hancock? Do I have that right?
 19 A. Yes.
 20 Q. And it was updated after ManuLife took over John
 21 Hancock? Do I have that right?
 22 A. I don't recall because when ManuLife took over,
 23 the whole procedures changed, and I'm not sure
 24 what happened to the guidelines after that date.

1 Q. Okay. In the binder you reviewed on Friday
 2 afternoon, was the manual of guidelines
 3 included?
 4 A. I don't recall seeing it.
 5 Q. How thick is it -- was it as of April 28th,
 6 2004?
 7 A. I want to say about an inch.
 8 Q. And did that manual of guidelines influence the
 9 processing of the loan application in this case?
 10 MR. POPEO: Objection.
 11 Q. In other words, did the policies, guidelines,
 12 requirements, targets, practices of John Hancock
 13 which existed as of April 28, 2004 affect the
 14 loan application in this case?
 15 MR. POPEO: Same objection.
 16 A. I have no specific recollection of the
 17 processing of the application in this case.
 18 Q. So you can't answer one way or the other?
 19 A. Correct.
 20 Q. Do you recall what policies, guidelines,
 21 requirements, targets, practices, processes or
 22 methods did apply to this loan application in
 23 this case?
 24 MR. POPEO: Same objection.

17

19

1 A. The guidelines as they existed in the binder
2 that I've referred to applied generally to all
3 of the loans that were underwritten and approved
4 by John Hancock.
5 Q. So by that answer, I'm hearing you say that the
6 manual of guidelines did apply to the loan
7 application in this case?
8 A. Yes, they probably did, but, again, I have no
9 specific recollection that they did.
10 Q. Now, the fourth topic on which you've been
11 designated as the 30(b)(6) designee is described
12 as the manner, methods and/or process by which
13 John Hancock approved mortgage loans during the
14 period from January 1, 2000 through April 28,
15 2004.
16 What have you done to prepare for your
17 testimony as the 30(b)(6) designee?
18 A. During my meeting with counsel on Friday
19 afternoon, we discussed this topic.
20 Q. Did you review any documents to prepare for your
21 testimony on that subject?
22 MR. POPEO: Objection.
23 A. Again, I reviewed -- the only documents I
24 reviewed during that meeting were the documents

18

1 contained in the binder that we went through.
2 Q. And that binder was not a John Hancock binder?
3 It was a binder assembled by counsel? Do I have
4 that right?
5 A. Correct.
6 Q. And was that binder organized in chronological
7 order?
8 A. I don't recall.
9 Q. Did you look -- how thick was that binder?
10 A. Several inches. Three or four inches or more.
11 Q. And it's from -- and it's that binder that you
12 used to prepare for your testimony as the
13 30(b)(6) designee on the three topics. Am I
14 right about that?
15 MR. POPEO: Objection. You can answer
16 the question.
17 A. That's the only written information I reviewed
18 to prepare for my testimony today.
19 Q. You don't have any documents at home outside of
20 John Hancock that relate to the processing of
21 this application? Am I right about that?
22 A. Correct, you are right.
23 MR. SCHER: Well, I think we'll
24 formalize this, but we certainly should

1 be produced the manual of guidelines and that
2 binder, the materials that were used to prepare
3 the 30(b)(6) designee. I'll take that up with
4 you, Mr. Popeo.
5 Q. Now, you said that after ManuLife acquired John
6 Hancock on April 28th, 2004, the whole procedure
7 changed. Do I have that right?
8 A. That's right.
9 Q. And can you tell me how it changed?
10 A. ManuLife introduced some changes to the
11 procedures, including the elimination of the
12 loan committee and the substitution of an
13 individual signatory approval process.
14 Q. And what is -- just, if you would, describe to
15 me in words what the difference between a loan
16 committee process is and a signatory process is
17 as it applies to the change that was made by
18 ManuLife after its acquisition.
19 A. Under the committee structure, to obtain
20 approval for a loan, the loan officer would sit
21 before the loan committee and make a verbal
22 presentation of the facts surrounding the
23 application, and the committee would vote to
24 approve or to decline the application.

20

1 When ManuLife took over, instead of
2 going to a committee, there was a series of
3 approval authorities, dollar amounts authorities
4 assigned to individuals, and the loan officer
5 would go see those individuals and obtain their
6 signature approval on the application in a
7 one-off, one-at-a-time setting as opposed to
8 going before a committee.
9 Q. And did you understand what practical difference
10 that had --
11 MR. POPEO: Objection.
12 Q. -- on the approval process?
13 A. I'm not sure I understand your question.
14 Q. Do you know why that change was introduced by
15 ManuLife?
16 A. To the best of my knowledge, it was only because
17 ManuLife had used that signature process in
18 their past, and they bought Hancock. So they
19 instituted the policies and procedures they were
20 accustomed to.
21 Q. Was there a period of adjustment following the
22 acquisition by ManuLife where ManuLife changes
23 were introduced into the John Hancock process?
24 A. I don't recall.

21

23

1 Q. Was it done overnight? In other words, on the
2 day after the acquisition occurred, the loan
3 committee process ended and the signatory
4 process began?
5 MR. POPEO: Objection.
6 A. I don't recall the specifics of how it was
7 transitioned.
8 Q. How were you told about the change?
9 A. I believe my superior, Ivor Thomas, informed me.
10 Q. And Ivor Thomas was a ManuLife North American
11 vice president?
12 A. I don't recall his title. He was my boss.
13 Q. Okay. And he came in -- he came -- he became
14 your superior when ManuLife acquired John
15 Hancock?
16 A. Correct.
17 Q. Who had been your superior previously?
18 A. Sam Davis. However, I don't recall exactly when
19 Sam left. There may have been an interim person
20 between Sam and Ivor Thomas.
21 Q. Okay. And was it -- but it's your recollection
22 that Ivor Thomas is the one who instructed you
23 that the loan approval process would no longer
24 be the committee process and, instead, would be

22

1 the signatory process, right?
2 MR. POPEO: Objection.
3 A. I don't recall who specifically instructed me.
4 Q. What other -- you said the whole procedure was
5 changed. Was there any change other than a
6 change from a loan committee process to a
7 signatory process that resulted from the
8 acquisition by ManuLife of John Hancock?
9 A. I'm sure there must have been some changes to
10 the underwriting practices. I just don't
11 specifically recall what they were.
12 Q. So you -- sitting here today, you have no
13 recollection of any other changes that were
14 introduced by ManuLife subsequent to its
15 acquisition of John Hancock?
16 A. That's right.
17 Q. Was the 10 percent constant requirement a
18 requirement of John Hancock before it was
19 acquired by ManuLife?
20 MR. POPEO: Objection.
21 A. John Hancock had a sizing constant requirement.
22 Whether that was theirs or ManuLife's, I don't
23 recall.
24 Q. So the sizing constant was -- there was a sizing

1 constant in existence at the time that ManuLife
2 acquired John Hancock?
3 A. That's right.
4 Q. Was the sizing constant the same constant as the
5 one that ManuLife introduced?
6 A. Same meaning the same number, ten?
7 Q. Yes, yes.
8 A. I don't recall.
9 Q. And was the -- was its inclusion in the approval
10 process the same as it was in -- was the
11 10 percent constant of the same significance in
12 the John Hancock approval process as it was in
13 the ManuLife approval process?
14 MR. POPEO: I object to the form of
15 the question.
16 A. I really don't remember.
17 Q. From the time that you began working in this
18 area for John Hancock until the time you left,
19 was the 10 percent constant requirement ever
20 included in the loan application itself?
21 MR. POPEO: Objection.
22 A. Not to my recollection.
23 Q. Are you aware of any occasion when it was
24 proposed that that requirement be included?

24

1 A. No.
2 Q. Your position as senior investment manager,
3 senior -- was unchanged until the time you
4 departed from the company?
5 A. I believe that's right.
6 Q. So the acquisition by ManuLife did not change
7 your duties and responsibilities at the company?
8 A. No, that's not right.
9 Q. Tell me how your duties and responsibilities
10 changed after ManuLife acquired the company.
11 A. Well, as I indicated, we went from a committee
12 form of approval to an individual signature
13 process, and I had no additional signing
14 authority postmerger.
15 Q. And do you know why that happened?
16 MR. POPEO: Objection.
17 A. No, I don't.
18 Q. How did it come about that, as Mr. Malik
19 described it, you were downsized or your job was
20 eliminated at John Hancock?
21 MR. POPEO: Objection.
22 A. Could you repeat that question?
23 Q. Sure. Let me ask it directly. Tell me why it
24 is you left John Hancock.

25

27

1 A. I was told my job was eliminated.
 2 Q. And who told you your job was eliminated?
 3 A. Barry Nectow.
 4 Q. And did he tell you why your job was eliminated?
 5 A. He did not.
 6 Q. Had you -- was that -- did that occur in just
 7 one face-to-face meeting?
 8 A. It did. It was very brief.
 9 Q. And was the -- were there others whose jobs were
 10 eliminated at or about the same time?
 11 A. I recall that there were two others at the same
 12 time.
 13 Q. And is it your understanding that you were not
 14 replaced by anyone?
 15 A. That's -- I wouldn't know, honestly.
 16 Q. Were either of the others replaced by anyone?
 17 A. I wouldn't know.
 18 Q. Were you -- were your duties and
 19 responsibilities eliminated sometime prior to
 20 February 28, 2005?
 21 A. They were --
 22 MR. POPEO: Objection. You may
 23 answer.
 24 A. I was told I was relieved of my responsibilities

26

1 prior to February. I can't remember the exact
 2 date.
 3 Q. Okay. And can you tell me who told you that?
 4 A. Barry Nectow.
 5 Q. And was that the same conversation in which he
 6 told you that your job was eliminated?
 7 A. Correct.
 8 Q. So sometime prior to February -- prior to the
 9 day you left the company, Barry Nectow sat down
 10 with you and said, "Your duties and
 11 responsibilities have been eliminated in this
 12 company, and, therefore, you are not to be
 13 employed here any longer"? Is that basically
 14 it?
 15 A. I was told I was not to be employed after
 16 February 28th; however, I was free to come in
 17 and use the office effectively for job search
 18 purposes, but I had no further job duties with
 19 John Hancock.
 20 Q. Was this conversation with Mr. Nectow before or
 21 after the 1st of the year?
 22 A. It was on January 16th.
 23 Q. So it was after. January 16th, 2005. Prior to
 24 January 16th, 2005, had your duties and

1 responsibilities changed at the company?
 2 A. Only insofar as I've already described.
 3 Q. The signatory committee?
 4 A. Correct.
 5 Q. Other than being the signatory on approval of
 6 loans -- do I have that right; that was
 7 eliminated?
 8 A. That's right.
 9 Q. Was that immediately eliminated upon the
 10 acquisition of ManuLife?
 11 MR. POPEO: Objection. Asked and
 12 answered. You can answer it again.
 13 A. I don't recall the specific date, so
 14 approximately at the time the merger occurred or
 15 shortly thereafter.
 16 Q. But other than the signatory on the loan
 17 applications and loan approvals -- sorry. Your
 18 signature approval authority was eliminated on
 19 the approval of loan applications?
 20 A. On the approval of loans.
 21 Q. Approval of loans. Other than eliminating your
 22 signature authority on the approval of loans,
 23 were your duties and responsibilities changed in
 24 any other way?

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1 A. To the best of my recollection, no.
 2 Q. Were you as fully occupied before January 16,
 3 '05 as you had been prior to the acquisition by
 4 ManuLife --
 5 MR. POPEO: Objection.
 6 Q. -- except for the signatory -- signing of the
 7 approval of loans?
 8 MR. POPEO: Objection. You can
 9 answer.
 10 A. I was busy. I was busy through the date that I
 11 was told my job had been eliminated.
 12 Q. So you were as busy on January 16th as you had
 13 been on the day before ManuLife's acquisition,
 14 April 27th, for example, relatively?
 15 A. In general terms?
 16 Q. Yes.
 17 A. Yes.
 18 Q. How much time did it take to sign a loan
 19 approval?
 20 MR. POPEO: Objection.
 21 A. It varied from deal to deal. I couldn't begin
 22 to guess.
 23 Q. Okay. We're not just talking about the manual
 24 act of signing, but the approval of loans, which

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1 is a process that takes more than just signing a
 2 piece of paper, right?
 3 A. Is that what you're asking me?
 4 Q. Yes, I'm asking you that.
 5 A. Yes.
 6 Q. So when you say that your approval of loan
 7 responsibility had been eliminated, that
 8 eliminated other duties and responsibilities
 9 than just signing; didn't it?
 10 A. No, it did not.
 11 Q. I see. So you still were involved in the loan
 12 approval process short of the signing of the
 13 approval; is that right?
 14 A. That's right.
 15 Q. Could you describe to me the loan approval
 16 process that -- your role in the loan approval
 17 process?
 18 A. Before April 28th?
 19 Q. Yes, before April 28th.
 20 MR. POPEO: Sorry. Objection to form.
 21 You may answer the question.
 22 A. The field office originators and/or mortgage
 23 banker, third-party correspondents, would source
 24 a loan, find the opportunity, and submit it to

30

1 the investment officer. The investment officer
 2 would do the preliminary evaluation of the loan,
 3 determine whether or not it had merit, whether
 4 John Hancock would be interested in it. They
 5 would perform some preliminary underwriting, and
 6 then if they thought that the loan would be an
 7 attractive opportunity for Hancock, they would
 8 bring it to me; and we would go through it,
 9 evaluate it together, and I would indicate my
 10 concurrence that it was a good opportunity or I
 11 might kill the loan and decline it right then
 12 and there.
 13 If we agreed it was a good opportunity
 14 mutually, we would move forward and complete the
 15 full underwriting, negotiate the application
 16 with the borrower, and after the borrower signed
 17 the application and put up his points, we would
 18 then take it to loan committee for approval.
 19 Q. After April 28, what were your duties and
 20 responsibilities -- what was your role in
 21 connection with the loan approval process?
 22 MR. POPEO: Object to the form. You
 23 can answer if you can.
 24 A. My role and responsibilities in the process and

1 procedure didn't change very much at all, only
 2 my signature on the approval -- on the
 3 underwriting document no longer had weight as an
 4 approving authority.
 5 Q. As of the time you left John Hancock, the loan
 6 for the Montgomery Square property had gone
 7 through the ManuLife approval process. Am I
 8 right?
 9 MR. POPEO: Objection.
 10 MR. SCHER: Basis?
 11 MR. POPEO: Form.
 12 MR. SCHER: I want to fix the form.
 13 What's the form basis?
 14 MR. POPEO: It's compound.
 15 Q. As of the time you left the employ of John
 16 Hancock, had the loan application which is the
 17 subject of this dispute been approved by John
 18 Hancock?
 19 A. I have no specific recollection of this loan
 20 having been approved by John Hancock. However,
 21 I can't imagine that we'd be sitting here today
 22 if it had not been approved by John Hancock.
 23 Q. Okay. Putting aside your logic, you have no
 24 recollection if this loan was approved or not.

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1 Am I right about that?
 2 A. No specific recollection of this loan being
 3 approved, correct.
 4 Q. And as of the time you left John Hancock, were
 5 you aware of any possibility that the loan would
 6 not close?
 7 A. No recollection of that possibility.
 8 Q. And as of the time you left John Hancock, did
 9 you have -- did you have any awareness of any
 10 effort by John Hancock to seek damages for the
 11 failure of the loan to close?
 12 A. None.
 13 Q. So a suggestion that you participated in the
 14 decision to sue John Hancock would be wrong. Am
 15 I right about that?
 16 MR. POPEO: Objection to the form.
 17 Mischaracterizes.
 18 A. I don't understand the question.
 19 Q. You did not participate in a decision to seek to
 20 recover damages from Montgomery Square by John
 21 Hancock; am I right?
 22 A. I have no recollection of participating in that.
 23 MR. POPEO: Objection.
 24 Q. And at the time you left John Hancock, who was

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1 it within the organization as of this time who
2 had responsibility for making a decision to
3 pursue damages against a borrower who had not
4 closed on a loan?

5 MR. POPEO: Objection.

6 A. I don't recall anyone specifically having
7 responsibility for that kind of decision. It
8 was an incredibly infrequent type of occurrence,
9 so I'm not sure anyone was designated.

10 Q. Okay. Are you familiar with a project called
11 the Regatta project?

12 A. The name sounds vaguely familiar, but I don't
13 recall it.

14 Q. Principal with the last name Lordi?

15 A. Means nothing.

16 Q. Do you have any recollection of participating in
17 a decision to accept the deposits paid or the
18 points paid by the borrower upon the borrower's
19 decision not to close the loan?

20 A. I have no recollection of that event.

21 Q. After your responsibility as the loan approver
22 had been completed, whether by the John Hancock
23 method of committee or by the signatory method,
24 individuals signing off, of which you were not

1 achievement had been achieved after the loan was
2 approved?

3 A. If a loan had not met a rental achievement
4 threshold, I may have been consulted about it.
5 I would be involved on an exception basis,
6 perhaps --

7 Q. Okay.

8 A. -- in some of those kinds of decisions.

9 Q. What role, if any, would you have -- did you
10 have in the preparation of loan documents?

11 A. None.

12 Q. What role, if any, did you have in connection
13 with the disbursement of the loan itself?

14 A. To the best of my recollection, none.

15 Q. And in particular with respect to the Montgomery
16 Square property, the exception did not apply,
17 that is, you had no involvement in the
18 processing of the loan after the loan approval
19 process had been completed?

20 MR. POPEO: Objection to form. You
21 can answer if you can.

22 A. I don't remember any specifics about a
23 Montgomery Square loan.

24 Q. Do you remember any specifics at all about the

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1 one, what role, if any, did you have in
2 connection with a loan?

3 MR. POPEO: Objection.

4 MR. SCHER: What's the basis?

5 MR. POPEO: It's compound; it's vague;
6 it's asked and answered. You can answer it
7 again if you understand the question.

8 MR. SCHER: You didn't object to it
9 last time.

10 Q. Go ahead.

11 A. Could you repeat the question, please?

12 Q. Sure. What role, if any, did you have in the
13 loan approval process after your role as you
14 described it as loan approver had been
15 completed?

16 A. The loan approval process ended when the loan
17 was approved, so I don't understand your
18 question.

19 Q. Okay. So did you have any responsibility for
20 securing title insurance -- assuring that there
21 was title insurance on the property after the
22 loan was approved?

23 A. No.

24 Q. Or assuring that there was -- a rental level

1 Montgomery Square loan?

2 A. The only thing I vaguely recall is the name.

3 Q. Okay. And that recollection was not refreshed
4 by your review of the two or three-inch binder
5 your counsel provided you; am I right?

6 A. No, it was not.

7 Q. Do you have a recollection of a meeting between
8 Timothy Malik and the developers of the
9 Montgomery Square property?

10 A. A specific meeting?

11 Q. Yes.

12 A. No, none.

13 Q. Do you have a recollection of Mr. Malik
14 reporting to you what occurred at that meeting?

15 A. No, I don't.

16 Q. Do you recall participating in a process for the
17 calculation of losses that John Hancock contends
18 it suffered as a result of the loan not closing?

19 MR. POPEO: Objection.

20 A. No recollection of that.

21 Q. Now, this loan was a forward commitment. Do you
22 have an understanding of what that means?

23 A. I do.

24 Q. About how many forward commitment loans did you

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1 participate in -- and if it's thousands, just
 2 tell me that -- between -- for as long as you
 3 were with John Hancock?
 4 A. I'd have to guess. To come up with a number
 5 like that would be just guessing.
 6 Q. During the year 2004, the year in which ManuLife
 7 acquired John Hancock or let's say for the year
 8 prior to your leaving the company -- so that
 9 would be from February 28, 2004 to February 28,
 10 2005 -- how many forward commitment loan
 11 approvals did you participate in?
 12 A. I couldn't possibly guess what that specific
 13 number was.
 14 Q. So it's obviously more than two or three?
 15 A. It may be more than two or three, but I would --
 16 I think we did a hundred or so loans in 2004 --
 17 2003, we did a hundred or so loans. I don't
 18 know how many we did in 2004. How many of those
 19 were forwards, I simply don't recall.
 20 Q. And your definition -- could you give me your
 21 definition of a forward commitment?
 22 A. It's a loan where we lock the interest rate on
 23 the loan at time of application signing and loan
 24 approval, but the loan doesn't fund until

1 A. I definitely don't remember the specific number
 2 that did not close. However, I'd be shocked if
 3 there were any. It was extremely unusual for a
 4 forward not to close.
 5 Q. Can you recall in your time at John Hancock and
 6 your position as senior investment officer a
 7 forward not closing?
 8 A. I can't specifically recall any forward not
 9 closing.
 10 Q. So then would it be fair to say that in your
 11 experience at John Hancock, you never sought to
 12 recover damages from a lender -- from a
 13 borrower, forgive me, from a borrower for not
 14 closing a loan? You have no recollection?
 15 A. I'm sorry. Say the question again, please.
 16 Q. Yes. Is it accurate that you do not recall ever
 17 having sought to recover damages from a borrower
 18 for not closing a loan?
 19 A. I do not specifically recall ever trying to
 20 recover damages.
 21 Q. While you were at John Hancock, had you heard
 22 within the John Hancock company of such an
 23 instance, where John Hancock sought to recover
 24 damages from a prospective borrower on a loan

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1 sometime in the future.
 2 Q. And generally speaking, is that -- isn't it true
 3 that every loan has that characteristic, that
 4 you lock in the rate and the loan doesn't close
 5 for a while? Is it longer than two-month
 6 duration? Is that what you're talking about?
 7 A. That is what I'm talking about. Typical
 8 nonforward loan will fund in two months
 9 approximately, and a loan that funds beyond two
 10 months is generally considered a forward.
 11 Q. Can you approximate the number of forwards that
 12 occurred in the year 2000 when you had a hundred
 13 loans?
 14 MR. POPEO: Object to the form.
 15 Mischaracterizes. You can answer.
 16 A. That wasn't 2000.
 17 Q. 2003. I'm sorry.
 18 A. 2003. I couldn't possibly. It was a smaller
 19 number.
 20 MR. POPEO: If you know, you know.
 21 A. But I couldn't possibly estimate.
 22 Q. Do you have any recollection of the number of
 23 forwards which did not close in the year prior
 24 to 2-28-05?

1 which did not close?
 2 A. I don't recall specifically hearing of such an
 3 instance.
 4 Q. When you say specifically, you mean you just
 5 don't recall any such instance? Am I right
 6 about that?
 7 A. I don't recall any single specific instance of
 8 that occurrence.
 9 Q. When you say single, you mean you don't recall
 10 hearing of such an instance?
 11 A. Correct.
 12 Q. Am I right about that?
 13 A. Correct.
 14 Q. Is it -- how long were you at John Hancock in
 15 the position you left on February 28th, 2004 --
 16 2005, rather?
 17 A. From June of 1997 until the dates that I've
 18 already told you that I left.
 19 Q. And before -- and were you hired for the
 20 position you left?
 21 A. No.
 22 Q. What position were you hired for?
 23 A. I was hired for an investment officer position.
 24 Q. And to whom did you report?

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1 MR. POPEO: When he was first hired?

2 MR. SCHER: Yes. I'm sorry.

3 A. I believe a fellow by the name of Don Brown,
4 long since retired.

5 Q. And after your initial position, did you -- were
6 you subsequently promoted to a higher position?

7 A. That's right.

8 Q. And what position was that?

9 A. The senior investment officer position.

10 Q. And you reported to Sam Davis in that position?

11 A. I believe I was promoted in approximately 2000,
12 and reported to Debbie McInerny, who was then
13 manager of the position, and when she left and
14 Sam took over, I reported to Sam.

15 Q. And there may have been an interim position
16 between Sam and Ivor Thomas, but basically that
17 describes your employment history with John
18 Hancock?

19 A. That's right.

20 Q. Prior to your employment with John Hancock, did
21 you have real estate-related employment?

22 A. I did.

23 Q. Could you go back in time perhaps after your
24 completion of formal education and give me your

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1 job history?

2 A. Sure. I in June of 1979 graduated from the
3 M.B.A. program at the University of Rhode Island
4 and then immediately started with what was the
5 Industrial National Bank of Providence, Rhode
6 Island, and quickly became Fleet Bank, in their
7 Providence office, and after a couple years in
8 their credit lending program, took a job in the
9 real estate department in approximately 1981,
10 and stayed with Fleet until 1990. In 1990, I
11 left Fleet and went to work for Shawmut Bank in
12 their real estate department as a real estate
13 loan officer. Stayed with Shawmut Bank until
14 they were acquired by Fleet, ironically, in
15 1995. Found myself back at Fleet. Stayed on
16 for two more years until I ultimately left and
17 went to John Hancock.

18 Q. So that's it.

19 A. That's a summary.

20 Q. And after -- you are now with General Electric,
21 and your duties and responsibilities have
22 remained unchanged from the time you were hired
23 there?

24 A. Correct.

1 Q. In connection with your employment at John

2 Hancock, was your compensation connected to your
3 job performance?

4 A. I was -- I participated in an incentive
5 compensation plan, which gave me a bonus every
6 year, and the bonus was calculated on a complex
7 formula which, frankly, I and I doubt many of my
8 colleagues understood.

9 Q. Did that complex formula include to any extent
10 the volume of loans which had been approved?

11 A. I was told that it did. I believe that it did,
12 but I'd be hard-pressed to explain it to you.

13 Q. And did it relate in any way to the volume of
14 fees collected?

15 A. I don't recall.

16 Q. And by fees, I mean points. You used the word
17 "points." You understand what I mean by that?

18 A. I do, and I just don't recall.

19 Q. Do you have any recollection of John Hancock's
20 role in connection with the Avenel at Montgomery
21 Square project?

22 MR. POPEO: Object to the form of the
23 question.

24 A. John Hancock's role?

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1 Q. Yes.

2 A. I have no specific recollection of the Avenel's
3 loan other than the name of the project.

4 Q. Do you recall how the prospect of this loan came
5 to John Hancock?

6 A. I don't specifically recall. I would have to
7 assume it came through John Ferrie, but I have
8 no specific recollection of that.

9 Q. It may have come from a third-party broker?

10 A. It could have. However, in Philadelphia, we had
11 none.

12 MR. POPEO: If you know. Please
13 testify to what you know.

14 Q. You had no relationship with a broker because
15 John Ferrie was there?

16 A. Correct.

17 Q. So you're assuming that it came through John
18 Ferrie?

19 A. I am speculating it came through John Ferrie. I
20 would have no other way to know. I don't
21 recall.

22 Q. Do you recall that the loan prospect came to Tim
23 Malik?

24 A. Came -- could you define "came to Tim Malik"?

<p style="text-align: right;">45</p> <p>1 Q. That Mr. Ferrie brought the prospect of this</p> <p>2 loan to Mr. Malik?</p> <p>3 MR. POPEO: Object to the form.</p> <p>4 Q. Do you have a recollection of that?</p> <p>5 A. I recall that Tim Malik was assigned to work</p> <p>6 with John Ferrie.</p> <p>7 Q. Who assigned him to that?</p> <p>8 A. I did.</p> <p>9 Q. Do you have a recollection of assigning</p> <p>10 Mr. Malik to the Avenel loan?</p> <p>11 A. I don't recall the action of assigning him or</p> <p>12 communicating it specifically to either one of</p> <p>13 them, but I recall that they were assigned to</p> <p>14 work together.</p> <p>15 Q. Do you recall any involvement in the loan</p> <p>16 proposal made by John Hancock?</p> <p>17 A. On the Avenel apartments?</p> <p>18 Q. Yes, on the Avenel apartments.</p> <p>19 A. None.</p> <p>20 Q. None whatsoever?</p> <p>21 A. No.</p> <p>22 Q. In connection with your preparation for your</p> <p>23 testimony, did you review the loan proposal</p> <p>24 document?</p>	<p style="text-align: right;">47</p> <p>1 preparation of the loan application document by</p> <p>2 John Hancock for completion by the prospective</p> <p>3 borrower at the Avenel in Montgomery Square</p> <p>4 property?</p> <p>5 A. No recollection.</p> <p>6 Q. Was that the responsibility of the loan officer,</p> <p>7 Mr. Malik?</p> <p>8 A. My recollection is that generally a field office</p> <p>9 person, such as John Ferrie, would prepare the</p> <p>10 draft of the application and then show it to the</p> <p>11 investment officer for his review and comment.</p> <p>12 Q. Do you have any recollection of the field</p> <p>13 officer or the investment officer preparing the</p> <p>14 loan application?</p> <p>15 MR. POPEO: In this particular case?</p> <p>16 MR. SCHER: In this case.</p> <p>17 A. No, none.</p> <p>18 Q. In this case, the rate -- interest rate was</p> <p>19 locked as it was a forward commitment and a rate</p> <p>20 lock agreement was signed. Do you have any</p> <p>21 recollection of participating or knowing of the</p> <p>22 locking of the interest rate on this loan?</p> <p>23 A. For this loan, no.</p> <p>24 Q. When a -- you're familiar with the rate lock</p>
<p style="text-align: right;">46</p> <p>1 A. Could you define "loan proposal document" for</p> <p>2 me.</p> <p>3 Q. The document that is from John Hancock to the</p> <p>4 prospective borrower or its representative in</p> <p>5 which the first paragraph says, "Enclosed is --</p> <p>6 this is our loan proposal," and it outlines the</p> <p>7 terms of the loan.</p> <p>8 A. I did not review that document in any detail.</p> <p>9 Q. In that document, it states the total amount of</p> <p>10 the loan, \$32 million in this case. Do you have</p> <p>11 a recollection of reviewing that document in</p> <p>12 connection with your preparation here?</p> <p>13 MR. POPEO: Object to the form. You</p> <p>14 can answer if you can.</p> <p>15 A. I did not review that document in any detail.</p> <p>16 Q. Well, in any detail. Did your review of that</p> <p>17 document refresh your recollection, if you did</p> <p>18 see it?</p> <p>19 A. I think I saw the document. I glanced at it,</p> <p>20 but I did not read it.</p> <p>21 Q. Do you have any recollection of the negotiation</p> <p>22 of the loan proposal?</p> <p>23 A. No, none.</p> <p>24 Q. Do you have any recollection of any of the</p>	<p style="text-align: right;">48</p> <p>1 process, I take it?</p> <p>2 A. It's been a while. My memory is a little foggy.</p> <p>3 I participated in it, I know.</p> <p>4 Q. Can you describe to me what the rate lock</p> <p>5 process is?</p> <p>6 MR. POPEO: Objection. During what</p> <p>7 period of time?</p> <p>8 Q. At the time that you were employed by John</p> <p>9 Hancock.</p> <p>10 A. When the borrower signed the application and</p> <p>11 submitted his points with the application, that</p> <p>12 is when we typically locked a rate on a loan.</p> <p>13 Q. And what -- literally, what economic consequence</p> <p>14 is there at John Hancock at that time for</p> <p>15 engaging in a rate lock?</p> <p>16 MR. POPEO: Object to the form.</p> <p>17 A. Well, when we locked a rate, we typically</p> <p>18 purchased a hedge to protect us from movements</p> <p>19 in the treasuries, and if a borrower were to not</p> <p>20 then close on a loan and interest rates moved in</p> <p>21 a direction, then we would incur a breakage</p> <p>22 loss, an actual cash loss.</p> <p>23 Q. Do you know whether that hedge purchase occurred</p> <p>24 for the entire amount of the prospective loan?</p>

1 MR. POPEO: Objection.

2 A. I don't know.

3 Q. Is that what the practice was?

4 A. That was my understanding.

5 Q. And if interest rates moved in the wrong
6 direction between the time that the rate lock
7 was completed and the time that the loan was
8 approved, if the loan were not approved, is it
9 fair to say that that hedge loss would be borne
10 by John Hancock?

11 MR. POPEO: Object to the form. You
12 can answer if you can.

13 A. I don't honestly recall how we managed that
14 issue.

15 Q. Do you have a recollection that after the rate
16 was locked on this loan that the loan approval
17 process on the signatory method ran into a
18 problem?

19 MR. POPEO: Objection. This
20 particular loan?

21 MR. SCHER: Yes.

22 MR. POPEO: If you recall that.

23 A. I don't recall that.

24 Q. Do you recall among the documents that you

1 break when you get a chance.

2 MR. SCHER: Oh, sure.

3 Q. So then is it your testimony that every loan has
4 unique requirements and characteristics that
5 John Hancock has to evaluate and approve? Is
6 that right?

7 A. That's right.

8 Q. Are you familiar with the concept of yield
9 maintenance?

10 A. I am.

11 Q. And is it typical for John Hancock to require
12 that its yield be maintained following the
13 making of a loan?

14 A. Yes.

15 Q. Have you ever had the experience of John Hancock
16 requiring that its yield be maintained for the
17 making of a -- for the approval of an
18 application?

19 MR. POPEO: Object to the form.

20 A. I don't understand the question.

21 Q. So have you ever participated or known of a
22 situation where John Hancock required that its
23 yield be maintained on a loan which it didn't
24 make?

1 reviewed communications from Mr. Malik along
2 those lines?

3 A. I don't recall any communications with Mr. Malik
4 about this loan.

5 Q. Do you recall reviewing documents in which he
6 expressed concerns regarding this loan?

7 MR. POPEO: Objection.

8 A. No.

9 Q. Do you recall in connection with this loan that
10 there was a -- there were two loan approvals
11 undertaken; one on or about August 10th and the
12 second one on or about August 17th?

13 MR. POPEO: Objection.

14 A. I definitely don't.

15 Q. Is it unusual for there to be two loan approval
16 processes using either the committee or the
17 signatory method?

18 MR. POPEO: Objection.

19 A. I would say no.

20 Q. It's not unusual?

21 A. Every loan is different. Every loan has its own
22 set of circumstances. A second trip to the
23 approval authority is entirely possible.

24 MR. POPEO: If we could take a quick

1 MR. POPEO: Objection. You can answer
2 if you can.

3 A. I don't understand the question.

4 Q. Okay. When a loan is made, it typically
5 contains -- is documented with a mortgage and a
6 note --

7 A. Correct.

8 Q. -- and those documents, and John Hancock will
9 provide for yield maintenance, and any attempt
10 to prepay the loan must be accompanied by the
11 payment of the expected yield to John Hancock.
12 Am I right about that?

13 MR. POPEO: Objection. You can
14 answer.

15 A. That's right.

16 Q. Now, I'm asking you about a situation where the
17 loan is not funded, the loan is not made. Are
18 you aware of any situation in which John Hancock
19 has sought to obtain the amount that it would
20 have yielded on a loan if it had made that loan?

21 MR. POPEO: Objection to the form.

22 You can answer if you can.

23 A. Don't recall.

24 Q. Have you ever participated in the preparation of

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1 a document which would have entitled John
2 Hancock to recover yield maintenance amount for
3 simply processing a loan application as compared
4 with funding a loan?

5 MR. POPEO: Objection to form. You
6 may answer.

7 A. I recall no such instance.

8 MR. SCHER: We can take a break.

9 (Recess taken from 10:11 a.m. to
10 10:19 a.m.)

11 Q. I'm going to stay with this notion of recovering
12 yield maintenance for a loan which didn't close.
13 You understand what I'm talking about?

14 A. Yes, I think I do.

15 Q. And your testimony is that you have never
16 participated in the approval of a loan
17 application which entitled John Hancock to
18 recover yield maintenance for a loan that didn't
19 close?

20 MR. POPEO: Object to the form. You
21 may answer the question.

22 A. I don't recall ever participating in a
23 discussion about such an application.

24 Q. Okay. Now, to the best of your knowledge, you

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1 testified that the rental achievement level in
2 connection with a particular loan might be
3 something that you would involve yourself in
4 after the loan application had been approved.
5 Do you recall having participated in any way in
6 the Avenel Montgomery Square property after the
7 loan application had been approved?

8 A. No, I do not.

9 Q. There are -- there is attached to the loan
10 application an exhibit which sets forth three
11 scenarios of the financial condition of the
12 property at the time of the prospective loan
13 closing pro formas. Are you familiar with that
14 consent?

15 His hand is moving toward you every
16 time I ask a question. I don't know why.

17 MR. POPEO: I object to the form of
18 the question, but you may answer.

19 A. For this specific loan, is that what you're
20 asking?

21 Q. Yes.

22 A. I don't recall any part of the application for
23 this specific loan.

24 Q. And in connection with this specific loan, do

1 you recall any modifications of the projected
2 income or expenses after the loan application
3 had been submitted?

4 A. No, I do not recall.

5 MR. SCHER: Mark this as the next
6 exhibit.

7 (John Hancock Life Insurance Company
8 Documents were marked Exhibit Number 3
9 for identification.)

10 Q. I'll show you what I've had marked as Henderson
11 Exhibit 3. It's a document, the first page of
12 which is Bates-stamped JH 1128, produced by John
13 Hancock in this case, and the last page is JH
14 1148.

15 Can you tell me what this document is?

16 A. This looks like the credit approval document for
17 Montgomery Square partnership, as I read it from
18 the document.

19 Q. And you'll see -- on the second page that's
20 Bates-stamped 1129, three lines down, you see
21 your signature?

22 A. That looks like my signature.

23 Q. And it shows you as the team leader?

24 A. Correct.

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1 Q. And it shows that this signature was purportedly
2 placed on it on August 9, 2004?

3 A. Correct.

4 Q. Do you see that?

5 A. Yes.

6 Q. If you take a moment and review this document,
7 can you tell me whether it refreshes your
8 recollection as to the credit approval of the
9 Montgomery Square partnership by John Hancock?

10 A. Not particularly. I mean it's one of many, many
11 loans that we approved during the course of a
12 year.

13 Q. Is this one of the documents that you reviewed
14 in preparation for your deposition here today?

15 A. I don't recall seeing this document before,
16 within the last week.

17 Q. And that would include the Friday when you
18 prepared -- began your preparation for this
19 deposition, right?

20 A. That's right.

21 Q. Now, you see on this document, it says,
22 "Original redone"?

23 MR. POPEO: The handwriting on the top
24 of the document.

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1 A. Yes, I see that comment.
 2 Q. And the other handwriting, "Insert NCF" and
 3 insert 10 percent breakeven"?
 4 A. Yes, I see it.
 5 Q. Can you identify whose handwriting that is?
 6 A. No, I cannot.
 7 Q. And focusing specifically on those two
 8 interlineations on the document, does that
 9 refresh your recollection as to new conditions
 10 required for the credit approval of this loan?
 11 A. No, it does not.
 12 Q. You said that you didn't have signatory
 13 authority with respect to loan approval after
 14 the ManuLife acquisition?
 15 A. That's right.
 16 Q. And seeing this document is not inconsistent
 17 with your statement; am I right?
 18 A. That's correct.
 19 Q. So I see your signature on this. Why is this
 20 not your signature -- why isn't -- how is your
 21 signature approval changed after ManuLife's
 22 acquisition?
 23 A. I seem to recall being told that I was now, in
 24 effect, recommending with the investment officer

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1 the investment but not approving it.
 2 Q. I see. So to the outside world, the uninformed
 3 world, your signing of the loan -- credit
 4 approvals was unchanged, but the effect
 5 internally at John Hancock was changed?
 6 MR. POPEO: Objection to the form. If
 7 you know.
 8 Q. Do I have that right?
 9 A. I believe so. I think that's clearly indicated
 10 by the approved wording on this document, where
 11 those below that were the approvers, and I was
 12 not part of that.
 13 Q. If I understand correctly -- and I'm trying
 14 to -- if we move that "approved by" to the line
 15 above your signature, that's the way it was
 16 before ManuLife acquired John Hancock? Is that
 17 right?
 18 A. Prior to the acquisition, I was a member of the
 19 loan committee, and the committee approved the
 20 loans.
 21 Q. Turning to the third page of this document,
 22 first of all, is all of Henderson Exhibit 3 a
 23 form which was used by Hancock before the
 24 acquisition by ManuLife?

1 MR. POPEO: If you don't mind, is the
 2 form that we're looking at of the type that was
 3 generally used by Hancock?
 4 MR. SCHER: Thank you.
 5 A. Do I have time to go through this before I
 6 answer that question?
 7 Q. Absolutely. You have as much time as you need.
 8 A. To the best of my recollection, the top four
 9 pages were a new addendum that was added at the
 10 request of the ManuLife personnel, and the pages
 11 after -- fifth page and beyond were what John
 12 Hancock used to use.
 13 Q. So the page that is Bates-stamped JH 1132, which
 14 says at the top "John Hancock Life Insurance
 15 Company, a meeting of the mortgage and real
 16 estate loan committee was held on," that begins
 17 the old John Hancock form; am I right?
 18 A. I believe that's correct.
 19 Q. And the documents that begin JH 1128 through
 20 1131 appear to be documents introduced by --
 21 subsequently by ManuLife?
 22 A. Correct.
 23 (Copy of E-mails was marked Exhibit
 24 Number 4 for identification.)

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1 Q. I'll show you what I've had marked as Henderson
 2 Exhibit 4, which is a document Bates-stamped JH
 3 00131 and 132. Do you have that before you,
 4 sir?
 5 A. I do.
 6 Q. This appears to be a stream of e-mails -- I
 7 don't know -- string of e-mails, I guess, the
 8 first of which in time is dated August 11, 2004,
 9 at 7:32 p.m., from Tim Malik to Ivor Thomas with
 10 copies shown to you and Patricia Coyne. Do you
 11 see that?
 12 A. I do.
 13 Q. And I'd like you to take a minute and review it.
 14 You've reviewed it?
 15 A. Yes.
 16 Q. Does your review of the -- first of all, did you
 17 review this document in connection with your
 18 preparation for the deposition?
 19 A. I saw this document. I didn't read it
 20 carefully.
 21 Q. Okay. Does the review of the document either
 22 now or at the time of your preparation refresh
 23 your recollection as to the events surrounding
 24 the e-mail?

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1 A. No, it does not.
 2 Q. You have -- Patricia Coyne is shown as a carbon
 3 copy recipient. What was her job at the time in
 4 connection with this?
 5 A. After the merger, she was appointed a member of
 6 a brand-new -- I forget what they call it --
 7 credit approval group. I don't recall the
 8 correct name. So she was involved in the
 9 approval of new loans after the merger.
 10 MR. POPEO: Just to be clear for the
 11 record, the e-mail is August 11, 2004, and your
 12 answer and testimony applies to the time period
 13 of this e-mail, true?
 14 THE WITNESS: True.
 15 MR. POPEO: Sorry.
 16 Q. This is a form, the second page of which at
 17 least appears to be a -- the e-mail from
 18 Mr. Malik to you appears to be a form calling
 19 for Mr. Thomas, you, and Patricia Coyne to
 20 approve. Can you tell me -- can you describe to
 21 me what this process was?
 22 MR. POPEO: Objection to the form.
 23 You may answer the question.
 24 A. I'm really not sure. This doesn't appear to me

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1 to be anything that was done routinely. It's
 2 not a standard form. I'm not sure what prompted
 3 Tim to do this in this format.
 4 Q. I have not seen the version of this e-mail
 5 that's been signed. Can you recall having
 6 signed this document?
 7 A. No, I can't.
 8 Q. Do you recall anything in the content of this
 9 document regarding -- do you recall that the,
 10 capital A, Approval of the loan required a
 11 one-to-one coverage based on a 10 percent
 12 constant at funding?
 13 A. Do I specifically recall that as a condition of
 14 this loan?
 15 Q. Yes.
 16 A. I do not.
 17 Q. Was that a condition of all loans at John
 18 Hancock at that time?
 19 A. As I said earlier, we had a constant -- a sizing
 20 constant requirement at John Hancock, and
 21 ManuLife had one of their own. I would guess
 22 this is ManuLife's.
 23 (Copy of E-mail to Mr. Henderson from
 24 Mr. Malik, dated August 12, 2004 was

1 marked Exhibit Number 5 for
 2 identification.)
 3 Q. I'll show you what I've had marked as Henderson
 4 Exhibit 5, which is a document Bates-stamped JH
 5 1175. Do you have that before you, sir?
 6 A. I do.
 7 Q. And it's an e-mail from Timothy Malik, dated
 8 August 12, at 5:32 p.m., to you with a copy to
 9 Ivor Thomas on the subject of Avenel. Would you
 10 take a moment and review it?
 11 A. Yes.
 12 Q. When you have, let me know.
 13 A. Okay. I've read it.
 14 Q. Does it refresh your recollection as to the
 15 events surrounding the Avenel loan in or about
 16 August 12th, 2004?
 17 A. No, it does not.
 18 Q. Mr. Malik in this e-mail says, "I may lose the
 19 deal because of my conservatism," words to that
 20 effect. Do you have any understanding what he
 21 meant by that?
 22 MR. POPEO: Objection. You can
 23 answer.
 24 A. It sounds like he felt a need to modify the

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1 underwriting or he might lose the deal to
 2 competition. I don't know for sure. I can only
 3 speculate that's what he intended.
 4 Q. So you have no recollection of any manipulation
 5 of the numbers which the prospective borrower
 6 submitted to John Hancock in order to meet John
 7 Hancock's requirements?
 8 A. We approved many, many loans every year and
 9 evaluated many, many more than that. To
 10 remember tweaking the underwriting on one loan,
 11 I just don't.
 12 Q. Is tweaking the underwriting something that John
 13 Hancock does routinely?
 14 A. As I indicated earlier, we had a published set
 15 of underwriting guidelines. They're entitled as
 16 such for a reason. They're not policies.
 17 They're not set in stone. They're guidelines,
 18 and the loan officers are free to deviate from
 19 them where they feel it's justified so long as
 20 they can show justification for their action and
 21 convince the approval authority it's the thing
 22 to do. That's the way the system operates, is
 23 designed to operate that way.
 24 Q. Is it your testimony that the borrower is not

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1 told what the underwriting decisions where?
 2 MR. POPEO: Objection to form. You
 3 can answer the question.
 4 A. The borrower is told if the loan is approved or
 5 not.
 6 Q. That's it?
 7 A. That's essentially it, yes.
 8 Q. This particular requirement, the loan sizing
 9 requirement, determines the size of the loan,
 10 right?
 11 A. It's meant to guide you in determining what the
 12 size of the loan ought to be, correct.
 13 Q. And if a borrower, in this case, Avenel, is
 14 seeking a loan of \$32 million, would you agree
 15 that the borrower -- that it matters to the
 16 borrower what the size of the loan that John
 17 Hancock is approving is?
 18 MR. POPEO: Object to the form of the
 19 question. You can answer.
 20 A. That's a confusing question. Could you try it
 21 one more time, please?
 22 Q. Sure. Do you agree that the borrower, in this
 23 case, Avenel at Montgomery Square, wanted a
 24 particular loan amount to be approved by John

1 borrower. Again, I assume we're here because we
 2 did both of those things. Is that right?
 3 Q. If you committed to the borrower, did you commit
 4 to loan the borrower \$32 million?
 5 A. Without reading documents carefully, I can't
 6 answer that question.
 7 Q. If you committed to loan the borrower
 8 \$32 million subject to a sizing requirement,
 9 would you agree that the loaning of \$32 million
 10 is not absolute but, rather, conditioned on a
 11 sizing requirement?
 12 MR. POPEO: Object to the form of the
 13 question.
 14 A. Whatever conditions there are attached to the
 15 funding of the loan are specifically spelled out
 16 in the commitment letter. Those are the only
 17 conditions that would be used to test whether or
 18 not we would fund the loan.
 19 Q. And have you ever seen a commitment letter in
 20 this case?
 21 A. I assume I saw it back when I was involved in
 22 2004. I think I glanced at it last Friday
 23 afternoon in the binder of documents that I
 24 looked at.

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1 Hancock, right?
 2 A. I believe that every borrower is looking for a
 3 particular loan amount to be approved, correct.
 4 Q. And if John Hancock had a loan sizing criteria
 5 that affected the size of the loan such that the
 6 amount the borrower wanted was not going to be
 7 achieved, that mattered to the borrower, right?
 8 MR. POPEO: Objection. You can
 9 answer.
 10 A. I believe the only thing that matters to the
 11 borrower is what loan amount John Hancock
 12 commits to.
 13 Q. John Hancock did not commit to a loan amount in
 14 this case, did it, as of the time you left?
 15 A. I assume we approved the loan. That's why we're
 16 here. We had that conversation earlier.
 17 Q. We have the approval process that you saw. I'll
 18 show you the next one. August 17 is when the
 19 next series of signatures appears, so yes.
 20 A. I have no -- was that yes, we did --
 21 Q. Yes, you did approve the loan. You did
 22 participate in the approval of this loan.
 23 A. I have no specific recollection of approving
 24 this loan or committing this loan to the

1 Q. Is the commitment letter the loan application
 2 signed by John Hancock?
 3 A. When the loan application is countersigned by
 4 John Hancock, we then tend to refer to it as the
 5 commitment because it, in effect, then binds
 6 Hancock to commit the loan subject to the terms
 7 in that letter.
 8 Q. I see. It looks less like a letter than it does
 9 an agreement.
 10 A. True enough.
 11 Q. But that is your meaning? That is what you're
 12 referring to?
 13 A. Right.
 14 Q. So your testimony is that a \$32 million
 15 commitment subject to a 10 percent constant
 16 approval is a \$32 million commitment?
 17 MR. POPEO: Object to the form of the
 18 question. You can answer.
 19 A. I'm confused by the question. A \$32 million
 20 commitment is subject to the terms and
 21 conditions spelled out in the commitment.
 22 Q. Well, there were additional conditions set forth
 23 in the loan approval. You know that?
 24 MR. POPEO: Object to the form.

1 A. No, I don't know that.
 2 Q. Assume for the purpose of my question that there
 3 was a 10 percent constant contained in the loan
 4 approval which is not contained in the
 5 commitment, the loan application.
 6 A. They're independent issues.
 7 Q. Okay. And can you explain to me what you mean
 8 by that?
 9 A. If the approval authorities who signed off on
 10 the loan approval felt that all of the
 11 information in the loan approval was
 12 satisfactory, then they would then authorize the
 13 loan officer to commit to the loan subject to
 14 the conditions in the commitment.
 15 Q. What if the loan approval contains conditions
 16 that are not in the application?
 17 MR. POPEO: Objection. You can
 18 answer.
 19 A. Then my understanding based on all the advice I
 20 had received from Hancock counsel over the years
 21 was that the only conditions that mattered to
 22 funding the loan were the conditions contained
 23 in the commitment.
 24 Q. So why does the loan approval process occur at

1 all?
 2 A. There would be no commitment without a loan
 3 approval.
 4 Q. Why is the loan approval anything more than
 5 approve the loan application?
 6 MR. POPEO: Objection.
 7 A. Because as part of the underwriting process, you
 8 evaluate the risk of the deal, and that involves
 9 running various forms of analysis.
 10 Q. So if the forms of analysis show that the
 11 \$32 million will not be funded under any
 12 scenario that is set forth in the loan
 13 application, is it fair to say that the
 14 underwriting decision is to not fund the
 15 \$32 million loan while John Hancock is
 16 committing to fund the \$32 million loan?
 17 MR. POPEO: Object to the form.
 18 A. John Hancock was never in the habit of investing
 19 the time and energy and cost to evaluate and
 20 underwrite a loan, which was an extensive amount
 21 of time and costs, to commit to a loan we had no
 22 intention of funding. That makes no sense.
 23 Q. What time and effort -- well, that's what the
 24 fees are for, right? The \$965,000 in fees that

1 were collected on this, the points is to
 2 compensate John Hancock for processing and
 3 committing to the loan, right?
 4 MR. POPEO: Objection. You can
 5 answer.
 6 A. Our goal at Hancock was not to generate fee
 7 income. Our goal was to put earning assets on
 8 the books that would generate a long-term income
 9 stream.
 10 Q. And the way to do that is to loan money?
 11 A. Is to close loans.
 12 (John Hancock Life Insurance Company
 13 Documents were marked Exhibit Number 6
 14 for identification.)
 15 Q. Mr. Henderson, I'll show you what's been marked
 16 Henderson 6, which is a document that's been
 17 marked JH 0405 and ending with a map at Page
 18 00425. Do you have that document in front of
 19 you, sir?
 20 A. I do.
 21 Q. You can take a moment or as long as you like to
 22 review it. The first question I have is it
 23 says, "Imaged" at the top there. Do you know
 24 what that means?

1 A. I suspect it means that document had been imaged
 2 into the data processing system where they copy
 3 these documents electronically.
 4 Q. You'll see on the second page it shows you were
 5 out of office and does not have your signature
 6 on that.
 7 A. Right.
 8 Q. Does that mean you didn't recommend this loan?
 9 A. I don't know -- it means -- all I can assume is
 10 it means what it says, I was out of the office.
 11 Q. Okay. Now, this is a -- the same form of
 12 document which you -- which was presented to you
 13 as the Henderson Exhibit 3, if I'm not mistaken.
 14 MR. POPEO: We'll just dig it out.
 15 Q. Am I right about that?
 16 A. It appears to be the same form.
 17 Q. And that the interlineations or the red-lined
 18 additions have been included, the "NCF" and the
 19 "10 percent breakeven" have been typed into
 20 Henderson 6, right?
 21 A. Yes.
 22 Q. If you'd like to take a moment to review it, I'm
 23 going to ask you if you can tell me if you can
 24 recall any other changes or any changes at all

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1 in the loan approval for the Avenel loan.
 2 A. I recall no changes, but I don't recall the loan
 3 being approved.
 4 (Memorandum to Mr. Thomas from
 5 Mr. Henderson, dated August 16, 2004 was
 6 marked Exhibit Number 7 for
 7 identification.)
 8 Q. I'll show you what I've had marked Henderson
 9 Exhibit 7, and that's a document Bates-stamped
 10 JH 1176; and it's another version of that form
 11 which you testified you'd not seen before. Do
 12 you recall receiving this memorandum from
 13 Mr. Malik to Mr. Thomas and you on or about
 14 August 16?
 15 A. I do not.
 16 Q. If you take a moment to review it, tell me if it
 17 refreshes your recollection.
 18 A. I've read it. It does not refresh my
 19 recollection.
 20 Q. And you mentioned that Patricia Coyne was given
 21 a new title or new responsibilities after the
 22 ManuLife acquisition as a credit officer?
 23 A. That's right.
 24 MR. SCHER: Let me mark the next.

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1 (Memorandum to Mr. Malik from Ms. Coyne,
 2 dated August 17, 2004 was marked Exhibit
 3 Number 8 for identification.)
 4 Q. I show you what I've had marked as Henderson
 5 Exhibit 8. Is that right?
 6 MR. POPEO: Yes.
 7 A. Yes.
 8 Q. And it is a copy of a document Bates-stamped JH
 9 1174. Appears to be from Patricia Coyne to
 10 Timothy Malik. Does not show your name anywhere
 11 on it. I ask you to take a look at it and tell
 12 me if you can tell me what it is.
 13 A. I think as a part of Patty Coyne's new
 14 responsibilities that were created when ManuLife
 15 took over, one of the requirements was she issue
 16 this type of memo after each loan was approved.
 17 Q. And this sets forth the terms and conditions of
 18 the approval of the loan. Do I have that right?
 19 A. It sets forth some of the terms and conditions.
 20 I don't know if it's all the terms and
 21 conditions.
 22 Q. Okay. And in particular, if you look at the
 23 disbursement requirements, these -- the
 24 disbursement requirements are the requirements

1 that must be met before disbursement of the loan
 2 is made; do I have that right?
 3 A. Generally speaking, that's what disbursement
 4 requirements mean, correct.
 5 Q. And is that -- is it fair to say that your
 6 understanding was that after ManuLife assumed
 7 responsibility or acquired the company that
 8 Patricia Coyne -- Patricia Coyne's job was to
 9 set forth the terms and conditions under which
 10 the loan would be disbursed?
 11 MR. POPEO: Objection.
 12 A. My understanding was she was to issue a memo
 13 like this one.
 14 Q. Okay. Do you know who Jessica Leveroni was?
 15 A. I believe she was one of the in-house attorneys
 16 at Hancock.
 17 Q. And did her duties and responsibilities include
 18 collecting those materials necessary for the
 19 closing of loans?
 20 A. Yes.
 21 Q. And --
 22 A. Excuse me. Could I just correct that?
 23 Q. Yes.
 24 A. My understanding was she would collect the legal

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1 documentation for closing the loan.
 2 Q. Including title insurance?
 3 A. I would guess she would have reviewed the title
 4 insurance, sure.
 5 MR. POPEO: Just what you know,
 6 please.
 7 Q. Now, if Timothy Malik testified that he had a
 8 lunch with the prospective borrowers in May of
 9 2005 and that following that lunch, he reported
 10 to you what had transpired and that -- would you
 11 say he's just mistaken?
 12 MR. POPEO: Object to the form. You
 13 can answer the question.
 14 A. I can't imagine what would prompt him to say
 15 such a thing. Obviously, I was long gone.
 16 Q. And if he were to have testified that you came
 17 back to him after he reported what had
 18 transpired at the lunch and you told him that
 19 John Hancock had decided to seek damages from
 20 the prospective borrower, would you say he was
 21 mistaken?
 22 MR. POPEO: Same objection. You can
 23 answer the question.
 24 A. Did you say this was in May of 2005?

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1 Q. After May 31, 2005.
 2 A. I don't recall any such conversation.
 3 Q. Have you had any conversations with Mr. Malik
 4 since you left the company on the subject of the
 5 Avenel loan?
 6 A. None that I can recall.
 7 Q. On the subject of any loans?
 8 A. None that I can recall.
 9 Q. On any subject?
 10 A. I've spoken to Tim Malik less than ten times
 11 since I left.
 12 Q. And you talk about your boat and other stuff or
 13 you talk about business?
 14 A. I can't recall the content of any of the
 15 conversations. They've been brief, and they are
 16 probably, now that I think about it longer, five
 17 or six times or less since I left John Hancock.
 18 Q. Five or six times or fewer, and none included
 19 his reporting to you what transpired in
 20 connection with a meeting with the borrowers or
 21 prospective borrowers of Avenel, right?
 22 A. None that I recall.
 23 Q. And none included a conversation in which you
 24 reported the decision by John Hancock to sue or

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1 pursue damages from the prospective borrowers?
 2 A. I reported?
 3 Q. You reported.
 4 A. I have no recollection of such a conversation.
 5 Q. It has to be wrong; doesn't it?
 6 MR. POPEO: Objection.
 7 A. I would have no way to know.
 8 Q. You would know if you reported a decision by
 9 John Hancock to pursue damages against the
 10 borrowers; wouldn't you?
 11 A. I can't remember it.
 12 Q. Did you ever learn that John Hancock -- other
 13 than in preparation for this deposition, did you
 14 ever learn that John Hancock decided to pursue
 15 damages against the prospective borrowers of the
 16 Avenel project?
 17 A. I don't recall knowing it.
 18 Q. If you don't recall knowing it, are you prepared
 19 to say you don't recall reporting it to
 20 Mr. Malik?
 21 A. Yes, I am.
 22 Q. Do you recall Mr. Malik reporting to you that
 23 the prospective borrowers at the Avenel at
 24 Montgomery Square property had decided to pursue

1 other options, in particular, the possible sale
 2 of the property to a third party?
 3 MR. POPEO: Objection.
 4 A. No, I don't recall.
 5 Q. Did you know that before I had it in my question
 6 today? Did you know that the owners of the
 7 Avenel property had decided to sell it?
 8 MR. POPEO: Objection.
 9 A. I believe counsel had mentioned that to me last
 10 Friday afternoon.
 11 Q. And that was the first time you learned it?
 12 MR. POPEO: First of all, I object.
 13 He's testified he doesn't recall. Second of
 14 all, please don't report on any conversations
 15 between you and counsel regarding anything. You
 16 may answer the question.
 17 THE WITNESS: Thank you.
 18 Q. Let's do it this way, the easy way. Other than
 19 in a privileged communication between you and
 20 counsel, do you have any knowledge whatsoever
 21 regarding an intention by the prospective
 22 borrowers at the Avenel at Montgomery Square
 23 property to sell that property?
 24 A. No, no recollection.

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1 Q. Have you ever participated in any way in the
 2 calculation of on-line costs that the
 3 prospective borrowers of the Avenel property
 4 would have to pay John Hancock?
 5 A. I don't recall ever being involved in that.
 6 Q. Do you have any recollection of the prospective
 7 borrowers at the Avenel at Montgomery Square
 8 property communicating the occupancy level at
 9 the property, the rental occupancy level at the
 10 property?
 11 A. No, no recollection.
 12 Q. At the time that the internal loan approval was
 13 completed, can you tell me -- you describe --
 14 strike that. You described to me what you
 15 understood happened when the rate lock was
 16 completed, what economic consequence of that
 17 agreement was. Can you tell me what economic
 18 consequence, if any, resulted from the loan
 19 approval process?
 20 MR. POPEO: Object to the form.
 21 Generally speaking?
 22 MR. SCHER: At John Hancock.
 23 MR. POPEO: As a general matter?
 24 MR. SCHER: Yes.

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1 A. I'm not sure I understand the question. Could
2 you try it again, please?

3 Q. Okay. So let's just take the Henderson Exhibit
4 6. As a consequence of the action which
5 Henderson 6 evidences -- you've called it loan
6 approval, I think --

7 A. Uh-huh.

8 Q. -- what economic changes occurred, if any? In
9 other words, was \$32 million put into an escrow
10 account or not? I don't want to know the answer
11 to that specific question. I'm giving you an
12 example of an economic consequence. Can you
13 give me an example of any economic consequence
14 that resulted from the Henderson 6 loan
15 approval?

16 MR. POPEO: Object to form. You can
17 answer if you can.

18 A. No, I cannot describe the economic consequences.

19 Q. Now, back in the day when John Hancock before
20 acquisition after the loan committee met and
21 approved the loan in a forward commitment, what
22 economic consequence occurred?

23 MR. POPEO: Objection. You may
24 answer.

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1 A. When the loan committee approved?

2 Q. Yes.

3 A. Well, as I testified earlier, we would have
4 locked the rate, and Hancock would have hedged
5 the investment at that point.

6 Q. Any other consequence?

7 A. None that I'm aware of.

8 Q. So if I have it right, when John Hancock
9 approved the loan on or about August 16, 2004,
10 other than the hedge loss which you testified
11 about or -- the hedge cost, there were no other
12 economic consequences?

13 MR. POPEO: Object to the form of the
14 question. You may answer the question if you
15 can.

16 MR. SCHER: What's the basis?

17 MR. POPEO: It mischaracterizes the
18 testimony.

19 MR. SCHER: Okay.

20 Q. Other than what you described as the consequence
21 of the rate lock, from the time that the loan
22 application was made until the loan was approved
23 on August 16, there were no economic
24 consequences, right?

1 A. I'm sorry. I just got distracted. From the
2 time the loan was -- could you repeat that last
3 part?

4 Q. Let's start from the beginning. As of the time
5 of the loan approval on August 16, 2004, as of
6 that date, there were no economic consequences
7 resulting from the loan approval itself?

8 MR. POPEO: Objection. Answer.

9 A. I've already said that purchasing the hedge
10 would have been an economic consequence.

11 Q. That occurred in this case on August 1st or 2nd.
12 So we're at August 16, and I'm asking you what
13 changes -- economic changes occurred following
14 the August 16 loan approval?

15 A. None that I can think of.

16 MR. SCHER: Okay. Why don't we take a
17 short break if you don't mind.

18 (Recess taken from 11:11 a.m. to
19 11:16 a.m.)

20 Q. At the time the loan approval occurred on
21 August 16, 2004, was there any allocation of
22 funds or setting aside of funds that occurred in
23 connection with the loan application?

24 MR. POPEO: Objection.

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1 A. It simply wasn't a part of my job
2 responsibility. My responsibility was
3 origination of new loans. There were other
4 people at Hancock who handled that part of it.

5 Q. Who were they?

6 A. When we locked a rate, the people who allocated
7 the funds sat down that handled the form. I'm
8 sorry. I'm trying to think of their names, and
9 they're not coming to me.

10 Q. Titles are fine.

11 A. They were part of Barry Nectow's capital markets
12 group, reported to Barry.

13 Q. So when the rate lock occurred, the hedge was
14 acquired, and you've already described to me if
15 the interest rates went the wrong way, that
16 would cost money; if the interest rates went the
17 right way, that would not cost money?

18 A. Correct.

19 Q. Other than that, there was no setting aside or
20 allocating of funds, as far as you know?

21 MR. POPEO: Objection.

22 A. I don't know. That wasn't my concern.

23 Q. So in all of your years at John Hancock, you
24 were never made aware of any allocation or

1 setting aside of funds following a loan
 2 approval? Am I right?
 3 A. I was not aware of any specific allocation of
 4 funds. However, that was not part of my job
 5 responsibility.
 6 Q. Understood. I understand why you didn't know of
 7 any. I just want to know, did you know of any
 8 allocation or setting aside of funds as a
 9 consequence of a loan approval?
 10 A. No.
 11 Q. And as -- did you know of any expenses incurred
 12 by John Hancock in connection with the Avenel
 13 loan approval other than the hedge loss or the
 14 hedge commitment that resulted from the interest
 15 rate lock?
 16 A. I don't remember any of the specifics
 17 surrounding the Avenel loan.
 18 Q. Do you know Diane Crisilleo?
 19 A. That's one of the names I couldn't think of.
 20 Diane Crisilleo, I think is how she pronounces
 21 it.
 22 Q. And she is somebody who sits on the other side
 23 of the room or sat on the other side of the
 24 room?

1 A. Other side of the floor. Worked for Barry.
 2 MR. SCHER: I have no other questions.
 3 MR. POPEO: I have no questions.
 4 (Deposition concluded at 11:20 a.m.)
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CERTIFICATE

1 I, DAVID B. HENDERSON, do hereby certify that
 2 I have read the foregoing transcript of my
 3 testimony, given on March 1, 2006, and I further
 4 certify that said transcript is a true and
 5 accurate record of said testimony (with the
 6 exception of the corrections listed below):
 7

8 Page Line Correction

9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16
 17 Dated at _____, this _____

18 day of _____, 2006.

19 _____
 20 DAVID B. HENDERSON

21 SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY
 22
 23
 24 slb

CERTIFICATE

1
 2
 3 COMMONWEALTH OF MASSACHUSETTS
 4 SUFFOLK, SS

5 I, Sandra L. Bray, Registered Diplomate
 6 Reporter and Notary Public in and for the
 7 Commonwealth of Massachusetts, do hereby
 8 certify:

9 That DAVID B. HENDERSON, the witness
 10 whose deposition is hereinbefore set forth, was
 11 duly sworn by me and that such deposition is a
 12 true record of my stenotype notes taken in the
 13 foregoing matter, to the best of my knowledge,
 14 skill and ability.

15 IN WITNESS WHEREOF, I have hereunto set
 16 my hand this 19th day of March, 2006.
 17
 18

19 _____
 20 Sandra L. Bray, RDR
 21 Registered Diplomate Reporter
 22
 23
 24

Page 1

Page 3

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO. 05-11614-WGY

JOHN HANCOCK LIFE INSURANCE
COMPANY,

Plaintiff/Counterclaim
Defendant

Vs.

VESTMONT LIMITED PARTNERSHIP,
VESTMONT LIMITED PARTNERSHIP II,
VESTMONT LIMITED PARTNERSHIP III,
and VESTERRA CORPORATION d/b/a
MONTGOMERY SQUARE PARTNERSHIP,
Defendants/Counterclaim
Plaintiffs

VOLUME: I
PAGES: 1-66

DEPOSITION OF BARRY S. NECTOW
MARCH 10, 2006
REPORTERS, INC.

GENERAL & TECHNICAL COURT REPORTING
23 MERRYMOUNT ROAD, QUINCY, MA 02169
617.786.7783/Facsimile 617.786.7723

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19 Counterclaim Plaintiffs
20
21
22
23
24

Page 2

Page 4

1 DEPOSITION of BARRY S. NECTOW, a witness
2 called on behalf of the Defendants/
3 Counterclaim Plaintiffs, pursuant to the
4 Federal Rules of Civil Procedure, before
5 Judith McGovern Williams, Certified
6 Shorthand Reporter, Registered
7 Professional Reporter, Certified Realtime
8 Reporter, Certified LiveNote Reporter, and
9 Notary Public in and for the Commonwealth
10 of Massachusetts, at the offices of
11 Deutsch, Williams, Brooks, DeRensis &
12 Holland, P.C., 99 Summer Street, Boston,
13 Massachusetts, on Friday, March 10, 2006,
14 commencing at 12:50 p.m.
15
16 APPEARANCES:
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24 Counterclaim Defendant

I N D E X

1 Witness Page
2 BARRY S. NECTOW
3 Direct Examination by Mr. Scher 5

E X H I B I T S

10 Number Page
11
12 1 Multipage document, first 31
13 page headed Interest Rate
14 Circle Notification,
15 JH 01109 through 01117

Page 5

Page 7

1 PROCEEDINGS 1 receive?

2 MR. SCHER: Would you administer 2 A. A B.S. in finance.

3 the oath to the witness? 3 Q. And then you went to work for US Trust?

4 - - - 4 A. Correct.

5 BARRY S. NECTOW, first having 5 Q. And what position did you start out in?

6 been duly sworn, testified as follows in 6 A. I was a trainee.

7 answer to direct examination by MR. SCHER: 7 Q. And what position did you leave?

8 - - - 8 A. I was a commercial lender.

9 Q. Would you state your full name for the 9 Q. Okay. And what position did you take with

10 record, please? 10 John Hancock when you joined them?

11 A. Barry Nectow. 11 A. Commercial real estate lender.

12 Q. And your home residence is? 12 Q. Could you just report to me when your

13 A. 541 Grove Street, Needham, Massachusetts. 13 positions changed at John Hancock and what

14 Q. And by whom are you currently employed? 14 they changed to, your employment history

15 A. ARCAP, A-R-C-A-P, REIT, Inc. 15 at John Hancock?

16 Q. And where are they located? 16 A. I don't know the specific dates.

17 A. Boston and Dallas. 17 Q. That's okay.

18 Q. And where are you officed? 18 A. You know, I worked my way up through the

19 A. In Boston, 125 Summer Street. 19 commercial real estate finance

20 Q. And what position do you hold? 20 organization and over the 16 years I was

21 A. Managing director, loan origination. 21 there.

22 Q. What are your duties and responsibilities 22 Q. And at the time that Manulife acquired

23 in general terms? 23 John Hancock, which is April 28, 2004,

24 A. We are a commercial real estate lender, 24 what was your position?

Page 6

Page 8

1 and I head up the team that makes 1 A. It was a vice -- assistant -- assistant

2 commercial real estate loans. 2 vice president in the real estate

3 Q. When did you leave John Hancock? 3 investment group.

4 A. July 27th or July 29th. 4 Q. The acronym is REIG?

5 Q. And that would be 2005? 5 A. Yes.

6 A. Yes. 6 Q. And you were an AVP in the REIG?

7 Q. And what did you do for John Hancock while 7 A. Yes.

8 you were employed with them? 8 Q. And who reported to you?

9 MR. POPEO: Objection. 9 A. I couldn't name everybody.

10 You can answer. 10 Q. Patricia Coyne?

11 Q. When did you start with John Hancock? 11 A. Not directly.

12 A. In 1989. 12 Q. Okay. What group within REIG were you

13 Q. What had you done prior to 1989? Had you 13 assistant vice president? Or just the

14 been employed? 14 entire group?

15 A. Yes. 15 A. I was an assistant vice president in the

16 Q. By whom? 16 real estate investment group, right, so --

17 A. US Trust Company. 17 Q. Did you have any particular

18 Q. And before that? 18 responsibilities in that group?

19 A. College. 19 A. Yes.

20 Q. Where did you go to college? 20 Q. What side?

21 A. Bentley College. 21 A. I was in the commercial mortgage group --

22 Q. And what year did you graduate? 22 commercial mortgage area. Commercial

23 A. 1982. 23 mortgage-backed securities. That is

24 Q. And what concentration or degree did you 24 probably the most relevant.

Page 9

1 Q. Have you heard of teams within the real
2 estate investment group, the investment
3 team and the credit team? Have you heard
4 it described that way?

5 A. Yes.

6 Q. Were you involved with one team or the
7 other?

8 A. Do you want to put a date on that?

9 Q. Oh, okay. At April 28, 2004, the date on
10 which Manulife acquired John Hancock.

11 A. I was involved in those functions, but
12 that is not what they were called then.

13 Q. Okay. Subsequent to the acquisition,
14 there were some changes made at John
15 Hancock?

16 A. Correct.

17 Q. And let's turn to the summer of 2004.
18 What, if any, changes occurred with
19 respect to your title by August of 2004?

20 A. August of 2004?

21 Q. Sixty, ninety days.

22 A. I don't recall if my title had changed
23 then.

24 Q. Were there any changes in your duties and

Page 11

1 Q. And as a result of which he takes on some
2 duties and responsibilities? He is senior
3 to you; right?

4 A. Correct.

5 Q. And there are changes implemented. The
6 one I have heard is that the loan approval
7 process had been the committee process,
8 and it changed to the signature process?

9 A. Correct.

10 Q. Were there any other changes like that
11 that occurred on that level?

12 MR. POPEO: Objection.

13 A. That would be the biggest change.

14 Q. Okay. Were there any policies that
15 changed after Manulife's acquisition which
16 were implemented by the summer of 2004?

17 A. Yes.

18 Q. What policy changes occurred?

19 A. I think we adopted Manulife's policies and
20 procedures or began to. I'm not -- I'm
21 not certain they were all implemented by
22 August of 2004.

23 Q. Before you is an unmarked document. It is
24 called John Hancock Real Estate Financial

Page 10

1 responsibilities?

2 A. Yes.

3 Q. And what were they?

4 A. Subtle -- subtle changes due to the new
5 ownership of the company; functionally not
6 many.

7 Q. Okay. Could you describe any of the --
8 can you describe those subtle changes?

9 A. I think the changes would have occurred
10 more in the process in which we did things
11 rather than what the organization did.

12 Q. Okay.

13 A. For instance, a change due to different --
14 different people being involved in
15 transactions that may or may not have been
16 with the company premerger.

17 Q. Okay. So let's put some flesh on this
18 abstract discussion. Ivor Thomas joins
19 the company?

20 A. Yes.

21 Q. From Manulife?

22 A. Correct.

23 Q. Right?

24 A. Yes.

Page 12

1 Group Lending Guidelines, January 25,
2 2005. Is this the body of policies that
3 -- under which you operated while you were
4 at John Hancock, putting aside the date?

5 MR. POPEO: Objection.

6 A. Without seeing what is in there, I'm not
7 -- I can't be certain.

8 Q. Okay. But it was -- these, the policy
9 changes, were reflected in a document that
10 was a looseleaf document that changed from
11 time to time, but essentially it was the
12 lending guidelines; right?

13 A. Essentially, yes.

14 Q. Okay. Your testimony is over time, from
15 the time of the acquisition until the time
16 you left the company, various of
17 Manulife's policies were introduced and
18 incorporated into the policies of John
19 Hancock?

20 A. Correct.

21 Q. Is that right?

22 A. Correct.

23 Q. Can you identify any of them? Can you
24 report any of them to me, any of those

Page 13

1 policy changes?
 2 A. I think what I can suggest is that Hancock
 3 may have had a similar policy, and it may
 4 have been replaced by a Manulife policy
 5 that may or may not have been
 6 substantially similar.
 7 Q. Did you have supervisory responsibility
 8 for Tim Malik, the investment officer?
 9 A. Yes.
 10 Q. And did you report to --
 11 A. I'm sorry. Let me go back for one second.
 12 Q. Sure.
 13 A. Directly? Indirectly?
 14 Q. Directly or indirectly.
 15 A. That's a question?
 16 Q. Yes.
 17 A. Yes.
 18 Q. And to whom did Mr. Malik report directly?
 19 A. Tim Roseen.
 20 Q. And did Mr. Roseen report to you?
 21 A. Yes.
 22 Q. Are you aware of any Manulife or John
 23 Hancock policies which govern the
 24 occasions when a loan application would

Page 14

1 need to be amended?
 2 MR. POPEO: Objection.
 3 A. I'm not sure I understand the question.
 4 Q. You are familiar with the loan application
 5 process, I take it?
 6 A. Yes.
 7 Q. And you know that the loan application
 8 contains a variety of terms and
 9 conditions, including loan amount and
 10 duration of the loan, interest rate, so
 11 forth; right?
 12 A. Yes.
 13 Q. In connection with the approval of a loan
 14 application, are there policies or
 15 guidelines which govern when an
 16 application would need to be amended
 17 because the approval would not be given as
 18 the application -- in the form in which
 19 the application was made?
 20 MR. POPEO: Objection.
 21 Q. Do you follow me?
 22 A. I think you asked a lot of questions
 23 there.
 24 Q. Okay. Can you answer any of them?

Page 15

1 MR. POPEO: Which one would you
 2 like an answer to?
 3 Q. Are there policies or guidelines which
 4 govern when an application would need to
 5 be amended?
 6 A. No.
 7 Q. Is that amendment decision in the
 8 discretion of the investment officer? The
 9 decision whether or not to seek an
 10 amendment of the loan application, is that
 11 in the discretion of the loan officer?
 12 MR. POPEO: Objection.
 13 You can answer.
 14 A. No.
 15 Q. What governs -- what controls the loan
 16 officer's discretion? What governs that?
 17 MR. POPEO: Objection.
 18 A. I think it depends on the circumstance.
 19 Q. All right. Well, give me an example of a
 20 circumstance where a loan officer would
 21 not have the discretion to amend or not.
 22 MR. POPEO: Objection.
 23 You can answer.
 24 THE WITNESS: What is that?

Page 16

1 MR. POPEO: You can answer the
 2 question, if you can.
 3 A. To reduce the interest rate.
 4 THE WITNESS: Can we stop for
 5 one second?
 6 MR. SCHER: Sure. Yes.
 7 THE WITNESS: Can you talk to me
 8 one second?
 9 MR. POPEO: Sure.
 10 (Recess taken at 1:05 p.m.)
 11 (Recess ended at 1:06 p.m.)
 12 THE WITNESS: I need a point of
 13 clarification.
 14 BY MR. SCHER:
 15 Q. Sure. You conferred with your counsel,
 16 and now you would like a point of
 17 clarification?
 18 A. Correct.
 19 Q. Sure.
 20 A. The point of clarification is when you are
 21 referring to the loan application, --
 22 Q. Yes.
 23 A. -- are you referring to the loan
 24 application prior to the transaction being

Page 17

1 approved or --
 2 Q. Yes.
 3 A. Okay. Then can we back up and ask the
 4 same questions again? Because I think I
 5 would answer them differently.
 6 Q. Okay. Let's go over the process then.
 7 The words that I am using are the words
 8 that I think I heard Patricia Coyne use,
 9 and that is why I am using them, but let's
 10 back up.
 11 MR. POPEO: Let's back up. The
 12 issue is merely he is confused, and he
 13 wants to make sure that his testimony is
 14 accurate.
 15 MR. SCHER: Absolutely.
 16 MR. POPEO: It is nothing more.
 17 MR. SCHER: I understand. And
 18 we need to get on the same page or this is
 19 going to be a mess. Nobody is going to
 20 know what we're talking about.
 21 BY MR. SCHER:
 22 Q. So here is Coyne exhibit 5. It is a
 23 document that was marked previously.
 24 (Handing Coyne exhibit number 5

Page 18

1 to the witness.)
 2 Q. If I may take it from your hands.
 3 (Handing Coyne exhibit number 5
 4 back to counsel.)
 5 Q. Now this is a loan application, as I
 6 understand it, until -- until it is signed
 7 by John Hancock? Do I have that right?
 8 A. Correct.
 9 Q. And after it is signed by John Hancock,
 10 which in this case it has been, it becomes
 11 a loan commitment?
 12 A. Correct.
 13 Q. And as I understand the process, while it
 14 is a loan application, while it is still
 15 in the application form, it is -- there is
 16 an approval process that occurs at John
 17 Hancock?
 18 A. Correct.
 19 Q. And that the signature by John Hancock on
 20 the loan application which converts it to
 21 a commitment is the result of that
 22 approval process?
 23 A. Correct.
 24 Q. So my question is are there policies or

Page 19

1 procedures for investment officers to --
 2 by which investment officers are governed
 3 which tell them when a loan application
 4 needs to be modified in order to secure
 5 approval?
 6 MR. POPEO: Objection.
 7 You can answer.
 8 A. No.
 9 Q. And so it is in the discretion of the
 10 investment officer to seek or not to seek
 11 an amendment to the application in order
 12 to secure approval?
 13 A. Yes.
 14 Q. All right. I am not intending to play a
 15 kind of logical game or something with
 16 you. I am really trying to understand.
 17 You said that if the loan
 18 approval were at a -- I think you said
 19 lower interest rate than the application,
 20 that the application would have to be
 21 modified; right?
 22 A. That's the point that I got confused.
 23 Q. Okay.
 24 A. Because that -- that -- I -- what I

Page 20

1 thought you were asking was if the
 2 commitment were to be changed, does the
 3 investment officer have the authorization
 4 -- I forget what words you used.
 5 Q. Required to go back to the borrower and
 6 seek an amendment.
 7 A. But you are now asking that same question
 8 in the context of the loan application?
 9 Q. Yes.
 10 A. And the investment officer has the -- has
 11 the ability to change the application
 12 prior to proposing the transaction
 13 embedded in the application for approval?
 14 Q. Okay. What I am trying to understand is
 15 this is not -- I assume that this is not
 16 an all or nothing --
 17 MR. SCHER: Strike that.
 18 Q. As I understand it, after the application
 19 has been made and while the application --
 20 while the loan proposal is in the
 21 recommendation process going from
 22 signatory to signatory, through the
 23 process, that there are occasions where
 24 the signatory can decline to recommend?

Page 21

1 MR. POPEO: Objection.
 2 Q. Am I right about that?
 3 MR. POPEO: Objection.
 4 You can answer.
 5 A. Yes.
 6 Q. So in this particular instance, we have a
 7 loan approval -- we have several loan
 8 approvals of this particular loan -- but
 9 this appears to be the last one, and we
 10 have Mr. Malik as the -- this is Coyne
 11 exhibit 3 -- we have Mr. Malik signing on
 12 August 16, and then we have Patricia Coyne
 13 signing on August 16.
 14 Assume for the purposes of my
 15 question that she declined to sign, she
 16 declined to recommend this loan at that
 17 point, and because for whatever reason.
 18 Would the investment officer have an
 19 opportunity to go back to the borrower and
 20 suggest an amendment to the application so
 21 as to secure the approval of the next
 22 recommender in line?
 23 MR. POPEO: Objection.
 24 A. Yes.

Page 22

1 THE WITNESS: Sorry.
 2 MR. POPEO: That's all right.
 3 Q. Are there any guidelines that would
 4 suggest when such a -- when such a
 5 renegotiation of the loan application
 6 occurs, should occur?
 7 MR. POPEO: Objection.
 8 A. None that I'm aware of.
 9 Q. So it is within the discretion of the
 10 investment officer as to whether or not to
 11 seek an amendment of a loan application;
 12 is that right?
 13 A. At that point in time, yes.
 14 Q. Okay. Now if the investment officer
 15 learned that the proposed amendment would
 16 break the deal, that is cause the borrower
 17 to abandon the application, would that
 18 suggest to the investment officer that he
 19 ought not take the proposed amendment to
 20 the borrower?
 21 MR. POPEO: Objection.
 22 A. Can you ask the question again, please?
 23 Q. Sure. If let's say the proposed
 24 modification were the introduction of a

Page 23

1 10 percent constant requirement in a loan,
 2 a loan sizing requirement there was a loan
 3 sizing requirement, that came up in the
 4 approval process, and the loan investment
 5 officer tested the waters and discovered
 6 that the borrower would not sign a loan
 7 application that contained a loan sizing
 8 requirement that was being discussed in
 9 the approval process, what discretion did
 10 the investment officer have to not require
 11 that amendment?
 12 MR. POPEO: Objection.
 13 A. The loan sizing requirement is a -- is an
 14 underwriting criteria.
 15 Q. Yes.
 16 A. So it doesn't really transfer to an
 17 amendment to the, at that point, the
 18 application.
 19 Q. Why then would the investment officer
 20 raise a question regarding the
 21 acceptability of a loan sizing requirement
 22 to the borrower? Why would he communicate
 23 the requirement at all --
 24 MR. POPEO: Objection.

Page 24

1 Q. -- if it didn't matter to the borrower, --
 2 MR. POPEO: Objection.
 3 Q. -- if it wasn't the borrower's business?
 4 MR. POPEO: Sorry. Objection.
 5 A. I don't know.
 6 Q. So is it fair to say that you can't offer
 7 me any explanation as to why John Hancock
 8 would ask or inform the prospective
 9 borrower of the existence of a new
 10 underwriting criteria like the 10 percent
 11 constant; is that right?
 12 MR. POPEO: Objection.
 13 A. I'm not sure. Is that --
 14 Q. Yes. The question is --
 15 A. I don't quite get the question.
 16 Q. Because you didn't know where I was going
 17 when I began it, so let me just give you
 18 the beginning, and I'm not sure I did
 19 either, but anyway.
 20 (Laughter.)
 21 Q. Can you explain to me why John Hancock's
 22 investment officer would inform a
 23 prospective borrower of the existence of a
 24 new underwriting criteria like the

Page 25

1 10 percent constant? Can you offer any
 2 explanation as to why?
 3 MR. POPEO: Objection.
 4 A. No.
 5 Q. Does it make any sense to you at all?
 6 MR. POPEO: Objection.
 7 A. No.
 8 Q. Let's just continue with your progress at
 9 John Hancock after the Manulife
 10 acquisition. You reported to me some
 11 changes had begun or an evolutionary
 12 process. Did any of those changes include
 13 the introduction of an underwriting
 14 requirement, a 10 percent constant
 15 underwriting requirement?
 16 MR. POPEO: Objection.
 17 A. Yes.
 18 Q. And when did that requirement -- when was
 19 that introduced? Do you remember?
 20 A. No.
 21 Q. How was it introduced?
 22 A. How was it introduced? I don't -- I don't
 23 recall.
 24 Q. Did Mr. Thomas have anything to do with

Page 27

1 me were there any other changes to your
 2 duties and responsibilities at the company
 3 other than the subtle changes that you
 4 described?
 5 A. No.
 6 Q. What occasioned your leaving the company?
 7 A. I got a job offer that was attractive to
 8 me from a -- my current employer.
 9 Q. Were you looking for work?
 10 A. No.
 11 Q. Were you in the job market?
 12 A. No.
 13 Q. Who replaced you?
 14 (Pause.)
 15 Q. Irreplaceable?
 16 A. Yes.
 17 Q. Is that the word that you were seeking?
 18 (Laughter.)
 19 MR. POPEO: That's obvious, but
 20 if you know the answer to the question,
 21 you can answer it.
 22 A. I don't know the specific answer.
 23 Q. Do you have a recollection of the Avenel
 24 deal?

Page 26

1 the introduction of that underwriting
 2 requirement?
 3 A. Yes.
 4 Q. And how was the introduction of that
 5 underwriting requirement implemented?
 6 A. I don't recall.
 7 Q. Do you recall whether the 10 percent
 8 constant requirement was introduced for
 9 the first time in connection with the
 10 Avenel loan?
 11 MR. POPEO: I object.
 12 A. Do I recall if it was introduced?
 13 Q. Correct.
 14 A. No.
 15 Q. Do you recall approximately when it was
 16 first introduced?
 17 A. No, I don't recall.
 18 Q. About August of 2004?
 19 A. It may have been. I don't recall.
 20 Q. Okay. Are you aware of the preparation of
 21 an amended loan application in connection
 22 with the Avenel loan?
 23 A. No.
 24 Q. Following the summer of 2004, can you tell

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1 A. I don't have specific recollection of it.
 2 Q. Do you have a general recollection of it?
 3 A. I can't give you a lot of specifics about
 4 it. I have a general idea about deals
 5 that we were doing at the time but not
 6 specific to this deal.
 7 Q. Okay. Did you do anything to prepare for
 8 this deposition today?
 9 A. Not -- not -- nothing in particular.
 10 Q. Did you meet with counsel?
 11 A. I did.
 12 Q. What was the duration of that meeting?
 13 A. Maybe an hour, an hour and a half.
 14 Q. When was it?
 15 A. A couple of weeks ago, two weeks ago.
 16 Q. Did you review any documents?
 17 A. Not specific documents.
 18 Q. Did you review general documents?
 19 A. Well, I looked at a -- a -- I looked at
 20 documents.
 21 Q. Oh, you did?
 22 A. I don't know what specific documents, but
 23 there were documents.
 24 Q. Did you look at documents with your name

Page 29

1 on it?

2 MR. POPEO: Did some of the

3 documents that he reviewed have his name

4 on it?

5 A. Yes.

6 Q. Did that refresh your recollection with

7 respect to this loan or anything about it?

8 A. Not particularly.

9 Q. Did it generally?

10 A. No. Not really.

11 Q. Let me just get in broad terms what your

12 involvement was in connection with the

13 Avenel loan application. Can you report

14 that to me?

15 MR. POPEO: Objection.

16 A. What my involvement was?

17 Q. Yes. Involvement.

18 A. With the loan application?

19 Q. With the loan. With this loan.

20 A. It would have been originated and

21 structured while I was in a senior role in

22 the department. I had no day-to-day

23 hands-on role in the loan.

24 Q. Okay. You participated in the locking of

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1 the interest rate at the time the loan

2 application was made?

3 A. I may or may not have.

4 Q. You participated in the loan approval

5 process?

6 A. Yes.

7 Q. You participated in the unwinding process?

8 MR. POPEO: Objection.

9 A. Did I participate in the?

10 Q. Unwinding.

11 MR. POPEO: Objection.

12 A. No, no.

13 Q. Were you informed in any way with respect

14 to the intention of the borrower not to

15 close the loan?

16 A. No.

17 Q. Were you aware that the borrower had

18 decided not to close the loan?

19 A. No.

20 Q. Were you aware that John Hancock had

21 decided to institute a lawsuit against the

22 borrower for not closing the loan and from

23 damages from not closing the loan?

24 A. Well, I'm aware now, but I wasn't --

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1 Q. At the time?

2 A. -- when it happened.

3 Q. So this lawsuit was filed in early August

4 2005. You left at the end of July of

5 2005. And it is your testimony that you

6 had no knowledge, information, whatsoever,

7 regarding the unwinding, the decision not

8 to close or decision to sue the

9 prospective borrower?

10 MR. POPEO: Objection.

11 A. I had no knowledge, none specific to this

12 transaction, that.

13 Q. Okay.

14 MR. SCHER: Off the record.

15 (Discussion off the record.)

16 MR. SCHER: Nectow 1.

17 MR. POPEO: On the board.

18 (Multipage document, first page

19 headed Interest Rate Circle

20 Notification, JH 01109 through

21 01117 marked exhibit number 1

22 for identification.)

23 BY MR. SCHER:

24 Q. I will show you what I have marked as

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1 Nectow exhibit number 1, and that is a

2 multipage -- so let's see what that is.

3 MR. POPEO: Do you want this?

4 MR. SCHER: Yes. Let me see.

5 MR. POPEO: Do you want to use

6 my copy?

7 MR. SCHER: No. That's okay.

8 Oh, here it is. Okay.

9 BY MR. SCHER:

10 Q. This is a multipage document which begins

11 at JH 1109 and runs through JH 1117.

12 (Handing exhibit number 1 to the

13 witness.)

14 Q. Can you tell me whether you have seen this

15 document before today?

16 (Pause.)

17 (The witness viewing exhibit

18 number 1.)

19 A. Well, I see my signature is on it.

20 Q. Yes?

21 A. So the answer would be yes.

22 Q. Did you review this in preparation for

23 this deposition?

24 A. No.

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1 Q. Can you tell me what it is?
 2 A. It is an interest rate circle
 3 notification.
 4 Q. And what does this mean? What does it
 5 mean that there is a notification of
 6 interest rate circle? Is that the rate
 7 lock?
 8 A. That would be notice of an interest rate
 9 lock. Correct.
 10 Q. Okay. And to whom is this notice given?
 11 A. Well, there might be a list in here.
 12 (Pause.)
 13 (The witness viewing exhibit
 14 number 1.)
 15 A. There is not.
 16 It is delivered to a long list
 17 of folks in and around John Hancock.
 18 Q. Okay. And what is it that you are
 19 approving on JH 1110?
 20 MR. POPEO: Objection.
 21 Q. Do you see your signature there?
 22 A. I do.
 23 Q. And it says "Approved by"?
 24 A. Correct.

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1 Q. What is it that you are approving?
 2 A. I am approving that this interest rate is
 3 an acceptable interest rate for a loan of
 4 this type.
 5 Q. Okay.
 6 A. With -- a loan with these interest --
 7 these loan terms.
 8 Q. The e-mail seems on this form -- I am
 9 still looking at that same page on which
 10 your signature appears.
 11 A. Yes.
 12 Q. It looks like it is from Tim Malik to Sam
 13 Wainwright?
 14 A. Correct.
 15 Q. Who is Sam Wainwright?
 16 A. Sam Wainwright would be an individual who
 17 works in the real estate investment
 18 group's portfolio management department.
 19 Q. And is that someone who reported to you as
 20 debt investment manager?
 21 A. Did he report to me? He reported to me.
 22 It may have been indirectly at that time.
 23 Q. Okay. And then the next entry is the
 24 date, and I guess the word "circle" or

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1 "rate lock date" are equivalent; is that
 2 right?
 3 A. Correct.
 4 Q. And the loan name and commitment number,
 5 identification of the borrower,
 6 self-evident, collateral, location,
 7 property type, number of units. It
 8 indicates the loan amount and the interest
 9 rate and the loan term. What is the
 10 average life at 9.29, that number?
 11 MR. POPEO: What does that
 12 represent?
 13 MR. SCHER: Yes.
 14 A. I am not -- I know the context in which it
 15 is used, but I don't know specifically how
 16 it is calculated.
 17 Q. Okay.
 18 A. And it is a -- it is -- it is another way
 19 to express on a mathematical formulaic
 20 basis sort of the term of the loan.
 21 Q. And this was a ten-year term; right?
 22 A. Yes. 120 months.
 23 Q. And do you know what that duration entry
 24 is?

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1 A. The same. The same answer as average
 2 life.
 3 Q. Okay. And the next shows prepayment, and
 4 this is the occasions for prepayment after
 5 the loan is funded; right?
 6 A. The occasions for prepayment?
 7 Q. Yes. I think one is at 48 months. I am
 8 sorry. What is the prepayment listing
 9 here?
 10 A. It is the terms under which the borrower
 11 can prepay the loan.
 12 Q. Okay. That is prepaying the loan after it
 13 has been funded?
 14 A. Correct.
 15 Q. And the take-down delay is the duration of
 16 the forward commitment?
 17 MR. POPEO: Objection.
 18 A. That is one way to express it, yes.
 19 Q. And at this point, there have been no fees
 20 received, but I guess this form has not
 21 been completed; right? Do you know?
 22 MR. POPEO: Objection.
 23 You can answer, if you know.
 24 A. I'm -- I'm not aware of whether fees were

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1 received or not received.
 2 Q. Okay. And then the loan-to-value ratio is
 3 shown. What is that?
 4 A. 70.55?
 5 Q. Yes. What does that represent?
 6 A. It is a representation of the -- a ratio
 7 of the loan amount divided by the value of
 8 the property.
 9 Q. And the debt service coverage?
 10 A. It is a ratio of the cash flow of the
 11 property divided by the annual debt
 12 service from the borrower to the lender.
 13 Q. Okay. Do you know why the loan-to-value
 14 ratio and debt service coverage are
 15 included on this form?
 16 A. I don't know.
 17 Q. What is it that you are approving?
 18 A. On this form?
 19 Q. Yes.
 20 A. The interest rate.
 21 Q. Can you tell me what those items are
 22 immediately to the right, the interest
 23 rate column, weighted JH treasury? The
 24 interest rate I know. That is the

1 represents, that description represents?
 2 A. In this context, I can't. I don't know.
 3 Q. Okay. It says "less the BAA2 curve"?
 4 A. Yes.
 5 Q. This appears to have been rated at BAA1.
 6 Can you tell me what the BAA2 curve is?
 7 A. The BAA2 curve would be a pricing --
 8 pricing that is published by another group
 9 at John Hancock, with the language that
 10 John Hancock would have called it the BAA2
 11 curve.
 12 Q. Is that reflected internally in those
 13 documents attached to the --
 14 A. Yes.
 15 Q. -- Bates stamped number 1113? Is that
 16 right or not?
 17 A. Oh, here it is. Yes.
 18 Q. Okay. Did you perform these calculations
 19 or --
 20 A. No.
 21 Q. And the less take-down delay, I guess
 22 those are BPS, am I right? BPS, is that
 23 the next?
 24 A. That is basis points. Correct.

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1 interest rate for this loan; right?
 2 A. Yes.
 3 Q. And the weighted JH treasury? What is
 4 that?
 5 A. It would be a calculation based on -- it
 6 is often referred to as the interpolated
 7 treasury. Here it is called the weighted
 8 average -- weighted JH treasury. It is an
 9 interpolation between two treasuries, a
 10 shorter treasury and a longer treasury
 11 than the term of this loan, to come up
 12 with a treasury that matches the term of
 13 the loan.
 14 Q. Okay. So like a five-year and a fifteen-
 15 year, and this is a ten-year loan, so you
 16 would interpolate the break point; is that
 17 right?
 18 A. Something like that, yes.
 19 Q. All right. Is there backup in this
 20 document that reflects how that
 21 calculation was performed?
 22 A. No.
 23 Q. Can you tell me what the monthly spread
 24 is, not the number, but what that category

1 Q. What is that category, the take-down
 2 delay, of basis points?
 3 A. It is a -- it is pricing associated with
 4 how long it takes from commitment to
 5 funding of the loan.
 6 Q. What do you mean by funding?
 7 A. Basis points or pricing. Basis points are
 8 probably a better way to describe it.
 9 Q. So it says you deduct the basis points
 10 represented by the delay, right, and the
 11 -- why do you deduct that?
 12 MR. POPEO: Objection.
 13 You can answer.
 14 A. I don't recall the mechanics of this
 15 calculation.
 16 Q. Who is -- what area of John Hancock is
 17 responsible for this calculation? Is it
 18 the investment officer or --
 19 A. The investment officer and a member of
 20 portfolio management.
 21 Q. And that could be Sam Wainwright or --
 22 A. Correct.
 23 Q. And that take-down delay is a result of
 24 this table, which is JH 1114?

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1 A. JH 1114, yes.
 2 Q. Does the interest rate lock approval do
 3 anything more than appraise the difference
 4 between the interest rate at which the
 5 loan will ultimately be made at and the
 6 appraisal of the John Hancock risk on that
 7 loan?
 8 MR. POPEO: Objection.
 9 A. I'm not sure I understand the question.
 10 Q. I'm trying to understand what your
 11 criteria for approving this is. Can you
 12 amplify that? You said you look at the
 13 interest rate, the 6.180, and how do you
 14 decide whether this is one I will approve
 15 or this is one I won't approve?
 16 A. And the approval you are asking about is
 17 the interest rate?
 18 Q. Yes.
 19 A. Not the transaction?
 20 Q. Right. This approval. The approval that
 21 is reflected on this document.
 22 MR. POPEO: Reflected by his
 23 signature on the page, which is JH 1110?
 24 MR. SCHER: Right.

1 was engaged in in the summer of 2004?
 2 A. No.
 3 Q. Was it a large percentage or negligible
 4 or --
 5 A. I'm not sure.
 6 Q. Do you have a recollection of the Regatta
 7 loan, --
 8 A. No.
 9 Q. -- a loan for a development called
 10 Regatta?
 11 A. No.
 12 Q. Are you aware of any instances when an
 13 approved application, a commitment, was
 14 not funded because of the borrower's
 15 decision not to proceed with funding?
 16 A. Specific instances?
 17 Q. Yes.
 18 A. No.
 19 Q. Are you aware that this instance resulted
 20 in no funding?
 21 A. Only that that's why I'm here today.
 22 Q. Okay. Other than this instance, is it
 23 your testimony that you know of no other
 24 instance when a borrower with an approved

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1 A. I think there is a -- the -- I think it
 2 would be market based, and if transactions
 3 such as this were proposed, and there
 4 would be many at the time, based on some
 5 criteria that would be generated
 6 internally, you would compare the
 7 transaction to the criteria, and decide if
 8 it was within, you know, so your tolerance
 9 around the criteria for transactions of
 10 this type.
 11 Q. And if I wanted to check on your approval
 12 process, how could I tell whether this was
 13 an approval that was easy to give or that
 14 was difficult to give, that was close or
 15 not?
 16 MR. POPEO: Objection.
 17 A. You are talking about the interest rate
 18 here?
 19 Q. Yes.
 20 MR. POPEO: Objection.
 21 Go ahead and answer.
 22 A. I'm not sure how it would be checked.
 23 Q. Are you aware -- can you recall the volume
 24 of forward commitments that John Hancock

1 commitment did not choose to proceed with
 2 funding?
 3 A. I don't know of any other instances.
 4 Q. Did Dave Henderson report to you?
 5 A. At?
 6 Q. At the time that you were there -- at the
 7 time he was there?
 8 MR. POPEO: At any time.
 9 A. Any time, yes. I don't remember
 10 specifically on -- well, if you asked me a
 11 date, I might not know specifically when,
 12 but at sometime, he did.
 13 Q. At the time that he left the company, was
 14 he reporting to you?
 15 A. Yes.
 16 Q. And do you recall him reporting anything
 17 to you about the Avenel loan?
 18 A. I don't recall him reporting anything, no.
 19 No.
 20 Q. It looks like he is the person who is down
 21 the chain from you, if you look at
 22 Coyne 3.
 23 (Handing Coyne exhibit number 3
 24 to the witness.)

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1 Q. Or maybe -- let's see. Coyne 1?
 2 (Handing Coyne exhibit number 1
 3 to the witness.)
 4 Q. Do you see Dave Henderson is the next one
 5 above you on the chain of signatures on
 6 Coyne exhibit 1?
 7 A. Correct.
 8 Q. Did he deliver this loan approval to you?
 9 A. I don't recall.
 10 Q. Looking at Coyne 1, do you have any
 11 recollection, putting aside my handwriting
 12 here, do you have any recollection of this
 13 loan approval?
 14 MR. POPEO: Does he recall
 15 seeing this document?
 16 MR. SCHER: Right.
 17 A. Well, I have seen the document before or
 18 ones like it. Not this particular one.
 19 Q. Do you recall this one?
 20 A. Not this one in particular.
 21 Q. Do you see on this one there is
 22 interlineation there within the special
 23 conditions?
 24 A. Right.

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1 Q. Specific conditions, forgive me.
 2 A. Yes.
 3 Q. NCF and 10 percent breakeven?
 4 A. Right.
 5 Q. Do you recall whether or not that writing
 6 was on your copy of this document at the
 7 time you signed it?
 8 A. I don't recall.
 9 Q. Is it the practice at John Hancock that
 10 the loan approval documents be
 11 interlineated -- have interlineations on
 12 them, or is it generally speaking that
 13 they are typed clean?
 14 MR. POPEO: Objection.
 15 A. It can happen. I wouldn't say it is
 16 practice, but it can -- it can and did
 17 happen.
 18 Q. Can you recognize the handwriting?
 19 A. I can't.
 20 Q. No?
 21 A. (The witness shaking his head.)
 22 MR. POPEO: You have to say yes
 23 or no for her.
 24 THE WITNESS: No.

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1 Q. To the best of your knowledge, has John
 2 Hancock ever sought to recover yield
 3 maintenance on a loan it didn't make?
 4 MR. POPEO: Objection.
 5 A. I don't recall.
 6 Q. Are you aware of any costs associated with
 7 the making of the commitment by John
 8 Hancock?
 9 A. Costs?
 10 MR. POPEO: Objection. This
 11 particular commitment?
 12 (Pointing to Coyne exhibit
 13 number 3.)
 14 MR. SCHER: Yes.
 15 A. Am I aware of any?
 16 Q. Costs that were incurred by John Hancock
 17 in connection with its making this
 18 commitment, a commitment to Avenel.
 19 A. I'm not aware of any.
 20 Q. If you look at Nectow 1, the first page.
 21 A. This?
 22 Q. That's it. It shows a proposed
 23 allocation?
 24 A. Um-hmm.

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1 Q. And are those various lines of business
 2 within John Hancock that are abbreviated
 3 there in that column to the right of the
 4 words "Proposed allocation"?
 5 A. Yes.
 6 Q. As a result of the interest rate circle
 7 notification, was there any economic
 8 consequence to this proposed allocation?
 9 MR. POPEO: Objection.
 10 A. I'm not sure I understand what you mean.
 11 Q. Is this proposed allocation the allocation
 12 that would occur when the loan is funded?
 13 MR. POPEO: Objection.
 14 A. Yes.
 15 Q. I mean after the \$32 million is lent to
 16 the borrower, that is when the allocation,
 17 simultaneous, that is when the allocation
 18 would be made; is that right?
 19 MR. POPEO: Objection. Are you
 20 asking when the allocation occurs?
 21 MR. SCHER: Yes.
 22 MR. POPEO: Okay. If you know
 23 the answer, you can answer the question.
 24 A. Can you ask the question again?

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1 Q. Am I right that the allocation occurs when
2 the loan is made?
3 A. No.
4 Q. When does the allocation occur? When does
5 the allocation occur?
6 A. At the time the interest rate circle --
7 Q. Why?
8 A. -- trans --
9 Q. Go ahead. What is the allocation? Just
10 tell me what that is, not to whom. But
11 what is the process of allocation?
12 A. The investment groups, the investment
13 divisions, the real estate investment
14 group as well as others are given
15 investment guidelines and targets by these
16 -- these accounts that are listed on this
17 page as well as others that they get
18 updated during the year, and the
19 investment divisions, as their originating
20 transactions, are allocating or assigning
21 transactions to the accounts that are
22 willing to invest in the type of assets
23 that a particular division originates, in
24 this case, a mortgage. So these accounts

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1 on this page -- and I am sure there are
2 others -- have identified investment
3 criteria where this transaction would have
4 been attractive to them.
5 Q. And what accounting transpires after the
6 proposed allocation is made?
7 MR. POPEO: Objection.
8 Q. How is this proposed allocation accounted
9 for?
10 MR. POPEO: Objection.
11 A. In the real estate investment group?
12 Q. Right.
13 A. Just someone in portfolio management would
14 follow or track how many transactions
15 would have been allocated or dollar amount
16 of transactions allocated to each one of
17 the accounts.
18 Q. So is there a paper trail that could trace
19 this -- these proposed allocations to the
20 various groups and be found on the
21 accounts of those groups?
22 MR. POPEO: Objection.
23 A. Yes.
24 THE WITNESS: Sorry.

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1 MR. POPEO: That's okay.
2 Q. And what accounts of those groups would
3 they -- would these allocations be found?
4 In what accounts? Would they be accounts
5 that would be funded in August of 2005
6 when the loan was made, or would they be
7 funded as of the date of the interest rate
8 circle? When would the funding occur?
9 MR. POPEO: Objection.
10 A. The funding occurs when the loan closes.
11 Q. Right. Okay.
12 A. That's the funding.
13 Q. Right.
14 A. Right? Is that what you're getting at?
15 Q. Right. The funding.
16 So there is no money set aside
17 as of the interest rate circle totaling
18 \$32 million somewhere, is there?
19 MR. POPEO: Objection.
20 A. There is.
21 Q. Where is that?
22 A. Well, each account is different, and you
23 would have to ask each account how they
24 account individually, but each -- each

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1 account identifies what their target would
2 be for say commercial mortgages, and as
3 mortgages are committed, the account
4 would, because a commitment is committing
5 John Hancock to fund that loan, they would
6 set aside those funds and say, "Based on
7 this chart, okay, I'm committing to making
8 a loan based on these terms on the date
9 that this loan funds." Those funds are
10 set aside and reserved for that -- for
11 this transaction.
12 Q. On that date? On the date that it funds?
13 A. No. On the date of this. On the date of
14 this rate lock.
15 Q. I think you said, "I'm committing to
16 making a loan based on these terms on the
17 date that this loan funds." Right?
18 A. That's what I said. Yes.
19 Q. And the date the loan funds is the date
20 the loan is made?
21 A. The date the loan funds is the date the
22 loan is made.
23 Q. And the date the loan is made in this case
24 is August of 2005?

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1 A. Well, it would have been in August of
2 2005.
3 Q. Yes. Yes. Right?
4 A. That's correct.
5 Q. Okay. And you say it varies for each of
6 these lines as to what they in fact do,
7 how they in fact account for this --
8 MR. POPEO: Objection.
9 Q. -- proposed allocation?
10 MR. POPEO: Objection.
11 A. I'm unaware of their accounting.
12 Q. Okay. Can you just tell me, quickly, or
13 slowly, what these various abbreviations
14 stand for? I was going to say tell me
15 quickly what they are, but you don't have
16 to do it quickly.
17 A. I don't know them all.
18 Q. Tell me the ones you do know. GBRE?
19 A. Hold on a second.
20 (Pause.)
21 A. If you gave me a while, I think I could
22 come up with the answer.
23 Q. Okay.
24 A. I don't know it off the top of my head.

1 MR. POPEO: Which page?
2 MR. SCHER: JH 1110.
3 MR. POPEO: Okay.
4 Q. Do you know why?
5 A. I do.
6 Q. Could you tell me?
7 A. It would notify in this case Robin and
8 Nathaniel that this was a transaction that
9 was likely to end up -- likely to be
10 assigned to them to -- to work on in their
11 various roles.
12 Q. Robin's being a closing person and
13 Nathaniel Margolis being the attorney who
14 would -- what? Coordinate the closing
15 documents?
16 A. That would be an internal attorney
17 involved in the closing of the
18 transaction. That's in general, not
19 specific to this transaction.
20 Q. Okay.
21 MR. POPEO: We should take five
22 when you get a chance.
23 MR. SCHER: What is that?
24 MR. POPEO: We should take a

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1 As you see, there are a lot of them here,
2 and a lot more that aren't --
3 Q. Okay.
4 A. I don't recall.
5 Q. If you look at Coyne 1, the loan approval,
6 and you turn to page 1134.
7 (Witness complying.)
8 Q. You see at the top "Lines of business
9 allocations voted" section?
10 A. Yes.
11 Q. And those are the same abbreviations, I
12 think, except that they put IBILCO on to
13 the right column. Do you have any idea as
14 to why?
15 A. No idea.
16 Q. And who would know? Someone in the
17 portfolio management?
18 A. Correct.
19 Q. Your interest rate circle notification
20 approval document, which is Nectow
21 exhibit 1, was copied to Robin Costa, who
22 is the closing analyst, and Nathaniel
23 Margolis, the internal counsel. Do you
24 know why?

1 quick break when you have a chance.
2 MR. SCHER: Sure. Absolutely.
3 (Recess taken at 2:03 p.m.)
4 (Recess ended at 2:14 p.m.)
5 BY MR. SCHER:
6 Q. Showing you what has been marked as
7 Coyne 3, and you have before you Coyne 1,
8 I believe, it shows you having signed on
9 August 9th the Coyne exhibit 1, probably
10 on August 16 -- yes -- Coyne 3. Do you
11 have any recollection of your recommending
12 the approval of the John Hancock loan to
13 Avenel Montgomery Square Apartments on
14 these two occasions?
15 A. No.
16 Q. Was this, looking at the loan approvals,
17 is it routine or is it unusual for there
18 to be two approval documents for this one
19 loan?
20 MR. POPEO: Objection.
21 A. Would you say that one more time?
22 Q. Coyne 1 and Coyne 3 are approving the same
23 loan on two different dates?
24 A. Yes.

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1 Q. Is that usual, unusual?
 2 A. It is not typical. No.
 3 Q. Okay.
 4 A. Not -- it is unusual.
 5 Q. Can you think of any other instance when
 6 it happened, when such a thing happened?
 7 A. No.
 8 Q. And if I were to tell you that after
 9 Coyne 1 was signed, consideration was
 10 given to the modification of the loan
 11 application to include a 10 percent
 12 constant requirement and to reflect
 13 accurately the projected financials of the
 14 borrower, and it was decided not to do
 15 that, and then Coyne 3 was prepared, would
 16 that --
 17 A. Can you --
 18 Q. -- jar your recollection?
 19 A. Can you --
 20 MR. POPEO: Objection.
 21 A. Can you start over, please?
 22 Q. Yes. You said it was unusual, not
 23 typical, for there to be two loan
 24 approvals. To the best of your

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1 recollection, had it ever happened before?
 2 Did it ever happen during the time you
 3 have been with John Hancock?
 4 MR. POPEO: Objection.
 5 A. I don't recall.
 6 Q. And if the loan was approved the first
 7 time with signatures on it, why was it
 8 needed to be approved a second time with
 9 signatures on it?
 10 A. I -- I have no idea.
 11 Q. What was Mr. Thomas' level of activity in
 12 connection with a loan like this in August
 13 of 2004?
 14 MR. POPEO: Objection.
 15 A. When you say "activity"?
 16 Q. Involvement.
 17 A. He was the head of the group at the time.
 18 Q. Right. So that means he had nothing to do
 19 with it? He looked at it for a
 20 millisecond, or he was heavily involved?
 21 MR. POPEO: Objection.
 22 If you know the answer, you can
 23 answer.
 24 A. I don't know the answer.

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1 Q. If you look over Coyne 1 and Coyne 3, can
 2 you tell me -- I don't want you to go page
 3 by page, although you are welcome to --
 4 can you tell me what the differences are
 5 between that warranted the resubmission of
 6 this application, of this approval?
 7 MR. POPEO: Objection.
 8 But you can answer.
 9 (Pause.)
 10 (The witness viewing Coyne
 11 exhibit number 1 and Coyne exhibit
 12 number 3.)
 13 A. Probably the one that sticks out the most
 14 is on the cash flow analysis page.
 15 Q. Right.
 16 A. It looks like some of the underwriting
 17 assumptions were changed. I mean without
 18 staring at it for a long time, I couldn't
 19 tell you what it is.
 20 Q. Are the underwriting assumptions that were
 21 changed on the cash flow analysis
 22 assumptions about which the lender should
 23 have -- the borrower should have been
 24 informed?

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1 MR. POPEO: Objection.
 2 A. It is highly unlikely. It is just an
 3 underwriting internal document.
 4 Q. This is -- the cash flow analysis is
 5 forecasting the income and expenses from
 6 the operation of the apartment
 7 development; right?
 8 A. Correct.
 9 Q. Why is that something that the borrower
 10 shouldn't be involved -- shouldn't have
 11 been informed of?
 12 MR. POPEO: Objection. Asked
 13 and answered.
 14 You can answer again, if you
 15 can.
 16 A. Can you ask that one more time for me?
 17 Q. Sure. Why is it that the borrower should
 18 not be informed of changes made in the
 19 projected income and expenses from his
 20 development?
 21 A. On this loan? Why --
 22 Q. Yes.
 23 A. -- should he not be informed?
 24 Q. Yes.

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1 A. I don't know why he should not be
 2 informed. I don't know the circumstances
 3 of the -- of why he was or wasn't
 4 informed.
 5 Q. Would it be fair to say that the borrower
 6 should be informed if assumptions
 7 regarding income and expenses were
 8 modified in connection with the loan
 9 approval process?
 10 MR. POPEO: I object to the
 11 form. With reference to these
 12 underwriting documents --
 13 MR. SCHER: Yes.
 14 MR. POPEO: -- or to some other
 15 time?
 16 You can answer if you can.
 17 I object.
 18 MR. SCHER: With reference to
 19 the loan approval.
 20 MR. POPEO: The same objection.
 21 A. I don't -- I don't -- I don't know. I
 22 don't know the answer.
 23 Q. So if a borrower -- when the borrower in
 24 this case provided estimates of its income

1 Q. Okay.
 2 A. -- to the borrower.
 3 Q. Well, if the size of the loan to be made
 4 to the borrower were governed by the net
 5 operating income of the investment, the
 6 size of the loan would matter to the
 7 borrower, wouldn't it?
 8 MR. POPEO: Objection.
 9 You can answer the question.
 10 A. Does the size of the loan matter to the
 11 borrower?
 12 Q. Yes.
 13 A. Yes.
 14 MR. SCHER: Why don't we take a
 15 short break.
 16 (Recess taken at 2:26 p.m.)
 17 (Recess ended at 2:33 p.m.)
 18 MR. SCHER: I have no other
 19 questions.
 20 (Whereupon, at 2:33 p.m., the
 21 deposition was adjourned.)
 22
 23
 24

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1 and expenses in connection with its loan
 2 application and those forecasts of income
 3 and expenses were modified by the loan
 4 officer in connection with the loan
 5 approval process, it is your position that
 6 the borrower should not be informed of
 7 that?
 8 MR. POPEO: Objection.
 9 A. That's not -- that's not what I said. I
 10 said he -- he may or may not be informed.
 11 Q. Should he be?
 12 A. It's not -- it's not -- it's not a
 13 requirement. It is not a practice. It
 14 may or may not happen.
 15 Q. And can you explain to me why it would not
 16 be material, why it wouldn't matter to a
 17 borrower that the operating expenses of
 18 the development that are used by the
 19 lender are different than those that he
 20 provided? Why isn't that important to the
 21 borrower?
 22 MR. POPEO: Objection.
 23 A. I don't know why it would be important or
 24 not important --

DEPONENT'S ERRATA SHEET

AND SIGNATURE INSTRUCTIONS

The original of the Errata Sheet
 has been delivered to Paul D. Popeo, Esq.

When the Errata Sheet has been
 completed by the deponent and signed, a
 copy thereof should be delivered to each
 party of record and the ORIGINAL delivered
 to Howard D. Scher, Esq., to whom the
 original deposition transcript was
 delivered.

INSTRUCTIONS TO DEPONENT

After reading this volume of
 your deposition, indicate any corrections
 or changes to your testimony and the
 reasons therefor on the Errata Sheet
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REPLACE THIS PAGE OF THE TRANSCRIPT WITH
 THE COMPLETED AND SIGNED ERRATA SHEET WHEN
 RECEIVED.

Page 65

1 ATTACH TO DEPOSITION OF: BARRY S. NECTOW
 2
 3 CASE: JOHN HANCOCK INSURANCE COMPANY VS.
 VESTMONT LIMITED PARTNERSHIP ET ALS

4 ERRATA SHEET
 5 INSTRUCTIONS: After reading the
 6 transcript of your deposition, note any
 7 change or correction to your testimony and
 the reason therefor on this sheet. DO NOT
 8 make any marks or notations on the
 transcript volume itself. Sign and date
 9 this errata sheet (before a Notary Public,
 if required). Refer to Page 64 of the
 10 transcript for errata sheet distribution
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 18 REASON:
 19

20 I have read the foregoing transcript
 of my testimony, and except for any
 corrections or changes noted above, I
 21 hereby subscribe to the transcript as an
 accurate record of the statements made by
 22 me.

23 BARRY S. NECTOW
 24

Page 66

1 CERTIFICATE
 2 Commonwealth of Massachusetts
 3 Plymouth, ss.
 4

5 I, Judith McGovern Williams, a
 6 Registered Professional Reporter and
 7 Notary Public in and for the Commonwealth
 8 of Massachusetts, do hereby certify:

9 That BARRY S. NECTOW, the
 10 witness whose deposition is hereinbefore
 11 set forth, was duly sworn by me and that
 12 such deposition is a true record of the
 13 testimony given by the said witness.

14 IN WITNESS WHEREOF, I have
 15 hereunto set my hand this day of
 16 , 2006.

17
 18
 19 Judith McGovern Williams
 20 Registered Professional Reporter
 Certified Realtime Reporter
 21 Certified LiveNote Reporter
 Certified Shorthand Reporter No. 130993

22
 23 My Commission expires:
 24 April 2, 2010

Page 1

Page 3

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO. 05-11614-WGY

JOHN HANCOCK LIFE INSURANCE
COMPANY,

Plaintiff/Counterclaim
Defendant

Vs.

VESTMONT LIMITED PARTNERSHIP,
VESTMONT LIMITED PARTNERSHIP II,
VESTMONT LIMITED PARTNERSHIP III,
and VESTERRA CORPORATION d/b/a
MONTGOMERY SQUARE PARTNERSHIP,
Defendants/Counterclaim
Plaintiffs

VOLUME: I
PAGES: 1-130

DEPOSITION OF PATRICIA COYNE
MARCH 10, 2006
REPORTERS, INC.
GENERAL & TECHNICAL COURT REPORTING
23 MERRYMOUNT ROAD, QUINCY, MA 02169
617.786.7783/Facsimile 617.786.7723

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18 both on behalf of the Defendants/
19 Counterclaim Plaintiffs
20
21
22
23
24

Page 2

Page 4

1 DEPOSITION of PATRICIA COYNE, a witness
2 called on behalf of the Defendants/
3 Counterclaim Plaintiffs, pursuant to the
4 Federal Rules of Civil Procedure, before
5 Judith McGovern Williams, Certified
6 Shorthand Reporter, Registered
7 Professional Reporter, Certified Realtime
8 Reporter, Certified LiveNote Reporter, and
9 Notary Public in and for the Commonwealth
10 of Massachusetts, at the offices of
11 Deutsch, Williams, Brooks, DeRensis &
12 Holland, P.C., 99 Summer Street, Boston,
13 Massachusetts, on Friday, March 10, 2006,
14 commencing at 9:15 a.m.
15
16 APPEARANCES:
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18 Paul D. Popeo, Esquire
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24 Counterclaim Defendant

1 I N D E X
2 Witness Page
3 PATRICIA COYNE
4 Direct Examination by Mr. Scher 6
5
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8
9
10
11 E X H I B I T S
12 Number Page
13
14 1 Multipage documents, headed 39
15 John Hancock Life Insurance
16 Company, Investment
17 Number 6518467, JH 01128
18 through 01148
19
20 2 Two-page e-mail chain, most 47
21 recent e-mail dated
22 August 11, 2004, to
23 Mr. Ferry from Mr. Malik
24

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1 3 Multipage documents, headed 51
2 John Hancock Life Insurance
3 Company, Investment
4 Number 6518467, JH 00405
5 through 00425
6

7 4 One-page memorandum dated 60
8 August 17, 2004, to
9 Mr. Malik from Ms. Coyne
10

11 5 Multipage Application to 78
12 John Hancock Life Insurance
13 Company for a First Mortgage
14 Loan, JH 00958 through 01028
15
16
17
18
19
20
21
22
23
24

1 A. Investment officer.
2 Q. Was your position investment officer in
3 the summer of 2004?
4 A. Yes.
5 Q. Have you had any changes in your duties
6 and responsibilities since the summer of
7 2004?
8 A. No.
9 Q. You are here pursuant to a deposition
10 notice. Have you done anything to prepare
11 for this deposition, other than scheduling
12 your appearance here?
13 A. No.
14 Q. Have you reviewed any documents in
15 connection with your appearance here?
16 A. No.
17 Q. Are you -- you have been designated as a
18 30(b)(6) designee. Are you aware of that?
19 A. Yes.
20 Q. And you have been designated as a 30(b)(6)
21 designee on three or three and a half
22 topics. The first is topic number 2 in
23 the notice, and it reads, "The terms and
24 conditions contained in the loan

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1 P R O C E E D I N G S
2 MR. SCHER: Administer the oath
3 to the witness, please.
4 - - -

5 PATRICIA COYNE, first having
6 been duly sworn, testified as follows in
7 answer to direct examination by MR. SCHER:
8 - - -

9 Q. Good morning, Ms. Coyne.
10 A. Good morning.
11 Q. My name is Howard Scher. I represent the
12 defendants in this case in a dispute
13 between John Hancock and Vesterra
14 Corporation, among others.
15 You are aware of that?

16 A. Yes.
17 Q. You have been -- first of all, would you
18 give me your full name, please?
19 A. Patricia Coyne.
20 Q. And where do you reside?
21 A. 121 Beechnut Road in Westwood.
22 Q. And by whom are you employed?
23 A. John Hancock.
24 Q. And what is your current position?

1 application, including but not limited to
2 any and all conditions that defendants
3 were required to meet for disbursement of
4 the loan."

5 Did you prepare for your
6 testimony as the designee for that topic?
7 A. No.
8 Q. And the second topic is topic number 5,
9 "the manner, method and/or process by
10 which John Hancock approved mortgage loans
11 during the period from April 28, 2004, to
12 the present."

13 Have you done anything -- are
14 you aware that you were designated as the
15 30(b)(6) designee on that topic?

16 A. Yes.
17 Q. And have you done anything to prepare for
18 that?
19 A. No.
20 Q. And the third topic is "the requirements
21 and conditions that, following John
22 Hancock's acceptance of the loan
23 application, would have to have been met
24 by defendants in order for John Hancock to

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Page 11

1 fund or disburse the loan applied for in
2 the loan application."

3 Are you aware that you were
4 designated as the 30(b)(6) designee on
5 that topic?

6 A. Yes.

7 Q. And have you done anything to prepare for
8 your testimony on that topic?

9 A. No.

10 Q. Did you have occasion to meet with your
11 counsel in advance of this deposition,
12 other than walking over here?

13 A. Yes.

14 Q. What was the duration of that preparation?

15 A. Oh, I don't remember. Maybe a couple of
16 hours.

17 Q. And what did you -- did you review
18 documents during the course of that?

19 A. There were some documents there, but we
20 didn't really look at them.

21 Q. So you didn't really look at them?

22 A. Well, we didn't look at them. Excuse me.

23 Q. They were there, but you didn't look at
24 them? Is that your testimony?

1 commitment at all?

2 A. No.

3 Q. Do you have any recollection of the
4 policies or procedures that were in place
5 in connection with the approval of the
6 loan commitment at that time?

7 A. The policies and procedures?

8 Q. Yes.

9 A. Yes. I'm aware of those.

10 Q. What are the -- what were the policies and
11 procedures in the end of July, early
12 August 2004 with respect to approval of
13 loan applications?

14 A. What do you mean what were they? We
15 have --

16 Q. What were --

17 A. We have a big thick binder of what they
18 are. A particular one you are interested
19 in? Or?

20 Q. So the policies and procedures are
21 contained in a big thick binder; right?

22 MR. POPEO: As of the date of
23 the question?

24 MR. SCHER: That's right.

Page 10

Page 12

1 A. Correct.

2 Q. Okay. Was reference made to those
3 documents at all?

4 A. Yes.

5 Q. By whom?

6 A. Paul.

7 (The witness pointing to
8 Mr. Popeo.)

9 Q. Did you say you did not look at those
10 documents? Is that right?

11 A. No. They were in front of him.

12 Q. All right. Do you have any recollection
13 of the loan application associated with
14 this case?

15 A. No.

16 Q. The application to John Hancock Life
17 Insurance Company for a first mortgage
18 loan, it was made in the summer of 2004.
19 The application was dated July 30, 2004.
20 Do you have any recollection of that at
21 all?

22 A. No.

23 Q. Do you have any recollection of your
24 involvement in the processing of the

1 A. Yes.

2 Q. As of that date?

3 A. Yes.

4 Q. And can you tell me what the cover of
5 those policies and procedures was?

6 A. The cover?

7 Q. What it said on the cover? How could I
8 identify it?

9 A. Lending guidelines.

10 Q. Is that what it was called?

11 A. Yes.

12 Q. And were there any other guidelines or
13 rules and regulations that governed your
14 activities in connection with that loan
15 application?

16 MR. POPEO: I object to the
17 form.

18 You can answer the question.

19 Q. Other than the lending --

20 A. I'm not sure I understand the question.

21 Q. You said there are lending guidelines?

22 A. Yes. For every loan.

23 Q. For every loan?

24 A. Correct.

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1 Q. And for every loan, were there any other
2 processes or procedures that -- policies
3 or procedures other than the lending
4 guidelines?
5 A. No.
6 Q. So the lending guidelines contained the
7 universe of policies and procedures --
8 A. Well --
9 Q. -- associated with the approval of loan
10 commitments?
11 MR. POPEO: I object to the
12 form.
13 You can answer the question.
14 A. No. I wouldn't say that was true.
15 Q. Okay. Is it the -- well, how would you
16 characterize what the policies and
17 procedures are?
18 A. Well, we have lending guidelines --
19 Q. Right.
20 A. -- that we look at. They are guidelines.
21 They don't govern anything. What governs
22 is the actual signed commitment.
23 Q. Okay.
24 A. Everything in the signed commitment is

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1 place as of the time of approval of the
2 loan commitment -- loan application in
3 this case?
4 MR. POPEO: Objection.
5 A. They might have had some revisions,
6 because it has a January 25th date.
7 Q. Right.
8 A. But it's -- I don't revise them and send
9 out new copies, so.
10 Q. So but your testimony is that as far as
11 you know, this is essentially -- these are
12 essentially the lending guidelines that
13 were in place in late July-early August of
14 2004?
15 A. Yes.
16 Q. And is it your testimony that there were
17 no significant changes in respect to the
18 policies and procedures for forward-
19 commitment loans?
20 MR. POPEO: Objection.
21 You can answer the question.
22 A. No. There isn't any -- there weren't any
23 changes.
24 Q. All right. Would your testimony be there

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1 what is needed to close a loan. There
2 isn't anything else. That's what rules.
3 MR. SCHER: Do you want to mark
4 this as -- well, let's just refer to it,
5 so we don't kill too many trees.
6 Q. This is a photocopy of a document produced
7 by your counsel to me in the past several
8 days. It is called John Hancock Real
9 Estate Financial Group Lending Guidelines,
10 January 25, 2005, and the first Bates
11 stamp number on it is JH 02278.
12 Can you tell me to what extent
13 this document, which runs through JH
14 02514, contains -- are the lending
15 guidelines in place as of the time of the
16 loan commitment in connection with this
17 case?
18 MR. POPEO: Objection.
19 You can answer.
20 A. Yes.
21 Q. Please do.
22 (The witness pointing to the
23 binder.)
24 Q. Oh, these are the guidelines that were in

Page 16

1 weren't any significant changes with
2 respect to any loan, whether it was a
3 forward commitment or a regular one?
4 A. Yes. I mean they are guidelines --
5 Q. Okay.
6 A. -- so.
7 Q. But having said that they are
8 guidelines, --
9 A. Right.
10 Q. -- does that mean that there weren't any
11 significant changes?
12 A. Not that I'm aware of.
13 Q. Okay. Can you report to me what the
14 process was -- what your duties and
15 responsibilities were in connection with
16 the processing of a loan application in
17 the summer of 2004?
18 A. I wasn't involved in the processing of a
19 loan application.
20 Q. What did you do with respect to loan
21 applications?
22 A. I didn't do anything with --
23 MR. POPEO: Well, wait.
24 Objection. Let me make sure we all

Page 17

Page 19

1 understand.
 2 THE WITNESS: Okay.
 3 MR. POPEO: He is asking I
 4 believe generically for loan applications.
 5 THE WITNESS: Right.
 6 MR. POPEO: Not this particular
 7 one.
 8 THE WITNESS: Right. I am not
 9 involved in the negotiation or anything to
 10 do with the application.
 11 BY MR. SCHER:
 12 Q. What involvement did you have in the
 13 summer of 2004 in connection with the
 14 making of -- approval of loan
 15 applications?
 16 A. None within loan applications.
 17 Q. And what role, if any, did you have with
 18 respect to credit evaluation?
 19 A. I looked at the -- I looked -- any loans
 20 that are coming, I am one of the
 21 recommenders for the loan approval. So
 22 after it is all negotiated.
 23 Q. Had you finished your sentence?
 24 A. Yes.

1 deal as submitted to you as one of the
 2 recommenders?
 3 A. Um-hmm.
 4 Q. Is that right?
 5 A. Yes, yes.
 6 MR. POPEO: By way of
 7 clarification, is this question directed
 8 to what happens in the present time or may
 9 have happened?
 10 MR. SCHER: I am sorry. Let me
 11 confine myself to --
 12 Q. I am curious -- my question is in the
 13 summer of 2004, July 30 through August 17
 14 or 18. Is what you just testified to what
 15 you did?
 16 A. Yes.
 17 Q. Beyond the 10 pages -- and I will show you
 18 the specimen that I have in connection
 19 with this deal momentarily -- but beyond
 20 those 10 pages, do you receive anything
 21 else?
 22 A. Pictures, maps.
 23 Q. Okay. So is that part of the 10-page
 24 submission?

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Page 20

1 Q. So after the loan application has been
 2 fully negotiated, --
 3 A. Um-hmm.
 4 Q. -- it is -- somehow it comes to your
 5 attention. Can you tell me what that
 6 process is?
 7 MR. POPEO: Objection.
 8 You can answer.
 9 A. It doesn't come to my attention until it
 10 is coming for approval.
 11 Q. Okay. When it is coming for approval, how
 12 is it presented to you?
 13 A. In an approval format. Probably 10 pages
 14 of.
 15 Q. Okay.
 16 A. All the numbers, you know, just the deal,
 17 in essence the deal.
 18 Q. And literally I am trying to find out what
 19 comes to your consciousness in connection
 20 with a particular loan, specifically this
 21 loan, but I'm just interested in generally
 22 in what your involvement is. So your
 23 testimony is that you get about a 10-page
 24 document containing all the numbers of the

1 A. Yes. It is probably about eight pages,
 2 and then you have a couple of pictures,
 3 maps, an aerial.
 4 Q. I am not testing your memory on the number
 5 of pages, but approximately?
 6 A. Yes. And they are all different.
 7 Q. So it could be --
 8 A. It could be twelve.
 9 Q. -- fifteen pages?
 10 A. Or it could be eight.
 11 Q. But at the back, there are some maps and
 12 photographs --
 13 A. Yes.
 14 Q. -- of the property?
 15 A. Yes.
 16 Q. In the middle, there are numbers and
 17 columns and containing projections of the
 18 financial condition of the property? Is
 19 that --
 20 MR. POPEO: Objection.
 21 Q. -- generally what is in the middle?
 22 A. It varies --
 23 Q. Okay.
 24 A. -- for each different deal.

Page 21

1 Q. And in the front, there is a signature --
 2 there is a place in the early part of the
 3 document for signatures; is that right?
 4 A. It is actually in the back.
 5 Q. In the back --
 6 A. Yes.
 7 Q. -- for the recommenders?
 8 A. In the back. The recommenders are in the
 9 back.
 10 Q. Okay. Now does that -- does the material
 11 submitted to a recommender include
 12 anything other than you just described
 13 generally?
 14 A. Generally, no.
 15 Q. Do you have any recollection that in this
 16 instance it included things other than
 17 what were generally included, that is in
 18 the instance of the Avenel transaction?
 19 A. I don't have any recollection.
 20 Q. Other than receiving the 10-, 12-, 15-page
 21 document -- what is that called?
 22 A. Approval document.
 23 Q. Approval document?
 24 A. Yes.

Page 22

1 Q. Other than your receipt of the approval
 2 document, do you have any other activity
 3 in connection with your role as a
 4 recommender?
 5 A. For this deal?
 6 Q. Prior to receiving the approval document.
 7 MR. POPEO: Objection.
 8 You can answer.
 9 A. No.
 10 Q. Generally speaking, the first you hear of
 11 a loan that you are being asked to
 12 recommend is when you receive the approval
 13 document? Is that?
 14 A. Typically that is how it works.
 15 Q. Okay. Do you have any recollection that
 16 it was different in this case?
 17 A. No.
 18 Q. Following your receipt of the approval
 19 document, what do you do?
 20 A. Take a look at it, review it, analyze it,
 21 see if the numbers work. If I have any
 22 questions, I will talk to the investment
 23 officer. If I like the deal, I'll
 24 recommend it.

Page 23

1 Q. Let's start at the end. If you recommend
 2 it, that means you will sign it?
 3 A. Correct.
 4 Q. Was one of the loan officers Timothy
 5 Malik?
 6 A. He was the investment officer, yes.
 7 Q. He was the investment officer on this
 8 transaction?
 9 A. Correct.
 10 Q. Do you recall having conversations with
 11 him on the subject of this loan?
 12 A. I don't recall.
 13 Q. Now when you look at the approval
 14 document, what are you looking for that
 15 you say you see if the numbers work? Can
 16 you amplify that at all?
 17 MR. POPEO: Objection.
 18 You may answer.
 19 A. I mean this is my job. I know what a good
 20 loan looks like.
 21 Q. Okay.
 22 A. So I don't know -- I don't think I could
 23 sit here and explain everything on years
 24 of knowledge of what makes a good deal or

Page 24

1 what doesn't, so I don't think I could.
 2 Q. All right. And in any event, if you think
 3 it is a good deal, you will approve it;
 4 right?
 5 A. I will recommend it for approval.
 6 Q. You will recommend it for approval?
 7 A. Yes.
 8 Q. Following your recommendation for approval
 9 -- well, let me ask you this. If you
 10 don't approve it, what happens to the
 11 document -- approval document or the loan?
 12 MR. POPEO: Objection.
 13 A. Well, I don't have approval rights.
 14 Q. All right. If you don't recommend it,
 15 what happens?
 16 A. It goes to -- I can write "Recommend
 17 denied."
 18 Q. And then what happens?
 19 A. It goes to the next level of approval or
 20 recommendation authority level.
 21 Q. And in the summer of 2004, what was that
 22 level? Who was in the position of that
 23 level, the higher level?
 24 A. It depends on the loan amount.

Page 25

1 Q. Okay.
 2 A. I don't recall the list of characters,
 3 because several of them have left.
 4 Q. Okay. How does it work? Are you a
 5 recommender -- did you have approval
 6 authority for any loans?
 7 A. Back then?
 8 Q. Yes.
 9 A. No.
 10 Q. Do you now?
 11 A. Yes.
 12 Q. When did that change occur?
 13 A. Oh, you know, I don't remember.
 14 Q. What occasioned it changing?
 15 A. I have five million now.
 16 Q. What was the occasion of your securing, of
 17 your obtaining approval?
 18 A. I don't know. They just came in and said
 19 I had it one day, and I said, "Great."
 20 Q. Was there a change in your compensation or
 21 your duties and responsibilities
 22 associated with that?
 23 A. No.
 24 Q. Was your job title changed at all?

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1 A. No.
 2 Q. Okay. So following your recommending the
 3 loan, what role do you have?
 4 A. What do you mean what role do I have?
 5 Q. Is that where --
 6 A. After I recommend it?
 7 Q. Yes.
 8 A. Bring it to the next signing authority
 9 level.
 10 MR. POPEO: Objection.
 11 Q. And you literally carry it to the next
 12 signing level?
 13 A. Typically. Sometimes the IO will come
 14 back and take it. Typically I take it to
 15 the next person.
 16 MR. POPEO: Just by
 17 clarification, you are still speaking of?
 18 MR. SCHER: The summer of 2004.
 19 THE WITNESS: The same thing.
 20 The summer of 2004 is the same as now.
 21 BY MR. SCHER:
 22 Q. And you will bring it to the next approval
 23 level or it will get to the next approval
 24 level. After that, what, if any,

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1 involvement do you have in connection with
 2 the approval of a loan?
 3 A. After it is executed, approval, the
 4 signer.
 5 Q. Yes.
 6 A. It comes back on my desk, and I attach the
 7 one-page letter that says, "Here are the
 8 terms on which it is approved," and then
 9 I'm done with it.
 10 Q. Now could you tell me the process you
 11 employed in the summer of 2004, in or
 12 about August 17, 2004, to create that
 13 letter?
 14 A. Could I tell you what?
 15 Q. The process. How did you go about
 16 creating the letter? Cut and paste or --
 17 A. No. Just draft a new letter, and just put
 18 the relative terms. They're basically the
 19 same for each deal.
 20 Q. Okay. Is there a place on the form that
 21 you extract those -- that one-page
 22 letter, --
 23 MR. POPEO: Objection.
 24 Q. -- the information contained on that

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1 one-page letter?
 2 A. All the information that goes on that
 3 one-page letter is found somewhere within
 4 that document.
 5 Q. Within the approval document?
 6 A. Correct.
 7 Q. And if I may just ask one more obvious
 8 question in a series of obvious questions,
 9 I take it that that is where your
 10 involvement ends?
 11 A. Yes.
 12 Q. So you have no involvement whatsoever in
 13 connection with the preparation for
 14 closing or the closing or the disbursement
 15 of the loan? Am I right about that?
 16 A. You're right about that.
 17 Q. So if I can just clarify in my mind, you
 18 receive the 10-, 12-, 15-page approval
 19 document. In the event you have questions
 20 about it, you may confer with the IO,
 21 investment officer, in this case,
 22 Mr. Malik. You either recommend or
 23 decline the recommendation, and perhaps I
 24 should just break it down. The first step

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1 is the receipt of the approval document,
 2 which is 10, 12, 15 pages long; right?
 3 A. Correct.
 4 Q. And that approval document is not the loan
 5 application? Do I have that right?
 6 A. You have that right.
 7 Q. And if -- sometimes you will talk to the
 8 investment officer; sometimes you won't
 9 talk to the investment officer. But one
 10 way or the other, you will either
 11 recommend or decline recommending the
 12 approval of the loan?
 13 A. Correct.
 14 Q. And then a third step, you transmit that
 15 recommendation or declination of
 16 recommendation to the next person on the
 17 chain, but your third involvement is,
 18 assuming the loan is approved, then you
 19 will attach a one-page letter that you --
 20 you will create a one-page letter --
 21 MR. POPEO: Objection.
 22 Q. -- from the approval document; is that
 23 right?
 24 A. Once it gets approved --

1 articulates her roles and
 2 responsibilities --
 3 MR. SCHER: Correct.
 4 MR. POPEO: -- in the approval
 5 process?
 6 MR. SCHER: Yes.
 7 MR. POPEO: You can try to do
 8 that.
 9 THE WITNESS: Do you want me to
 10 look at the whole thing?
 11 MR. POPEO: Just do the best
 12 that you can.
 13 Why don't we go off while she
 14 takes a look at it.
 15 MR. SCHER: Sure.
 16 (Discussion off the record.)
 17 (The witness proceeds to view
 18 contents of binder.)
 19 THE WITNESS: There is a
 20 definition. A credit officer is a member
 21 of the credit team.
 22 BY MR. SCHER:
 23 Q. There you go.
 24 A. I think that might be it. I don't recall

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1 Q. Yes.
 2 A. -- I attach a one page.
 3 Q. Okay.
 4 A. Correct.
 5 Q. In this lending guidelines document, could
 6 you help me? Is there any place or places
 7 in there where your role is described, the
 8 functions that you perform are described?
 9 A. There might be, but I can't -- I don't --
 10 I haven't memorized the whole thing, so.
 11 Q. Would you just take a moment and take a
 12 look at it and see if there are any? You
 13 can take longer than a moment if you would
 14 like to.
 15 A. It may take longer than a moment.
 16 Q. That's all right. Take a look at the
 17 table of contents, if you would like. If
 18 you see any areas that cover the functions
 19 that you described, I would like to know
 20 that.
 21 MR. POPEO: The document is in
 22 excess of 100 pages. Is the question
 23 merely to look at the document and
 24 determine whether the document itself

1 seeing anything in here.
 2 MR. POPEO: Howard can ask the
 3 question. I think you probably have
 4 performed the exercise.
 5 THE WITNESS: Okay.
 6 BY MR. SCHER:
 7 Q. Did you play any role in the preparation
 8 of these guidelines?
 9 A. Yes.
 10 Q. And what role did you play?
 11 A. I was one of the team -- one of the
 12 members of the team that was responsible
 13 for taking the Manulife underwriting
 14 guidelines and John Hancock guidelines and
 15 coming up with one set.
 16 Q. Okay.
 17 A. And they were quite similar.
 18 Q. And previously the Manulife and the John
 19 Hancock were quite similar, and there were
 20 little differences between the two? Is
 21 that what you are saying?
 22 A. Well, I mean there were differences, but
 23 for the most part, they were pretty
 24 similar.

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1 Q. Okay. In particular in connection with
 2 the process you have described, receiving
 3 approval, documents, recommending, and
 4 attaching the one-page letter you prepare
 5 -- what do you call that one-page letter,
 6 by the way?
 7 A. The approval letter.
 8 Q. Okay. What difference did you see between
 9 what Manulife had been doing and what John
 10 Hancock had been doing prior to the
 11 acquisition?
 12 MR. POPEO: Objection.
 13 A. I can't remember all the differences.
 14 Q. Can you remember any?
 15 A. Yes. They had smaller loan amounts. You
 16 know, again they're just guidelines, but
 17 they would look at loans say from one
 18 million up, where Hancock wanted to start
 19 at five million and up. You know, simple
 20 little things like that.
 21 Q. Are you familiar with a portfolio
 22 management?
 23 A. Yes. I am familiar with that.
 24 Q. What is portfolio management?

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1 A. I'm not a member of their team.
 2 Q. What team --
 3 A. I am on the credit team.
 4 Q. Okay. Is Mr. Nectow on the portfolio
 5 management team -- was he?
 6 A. Was he?
 7 Q. Yes.
 8 A. Yes.
 9 Q. What, if any, role did you have as a
 10 member of the credit team in connection
 11 with a rate lock?
 12 A. I can't recall if I signed the rate lock
 13 sheet on this particular deal.
 14 Q. You didn't.
 15 A. Oh, okay. Sometimes we do; sometimes we
 16 don't.
 17 Q. So sometimes the credit team will sign off
 18 on the rate lock and sometimes it won't?
 19 A. Right.
 20 Q. Are there different occasions that warrant
 21 whether you -- whether the credit team
 22 signs off on a rate lock or not?
 23 A. Yes. If we are around. If we are not
 24 around, they will go above us.

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1 Q. Okay.
 2 A. If we are around, they will show it to us
 3 and ask us if we want to sign off on it.
 4 Q. Available, meaning being in the office?
 5 A. In the office.
 6 Q. Was Mr. Nectow above you --
 7 A. Yes.
 8 Q. -- at the time --
 9 A. Yes.
 10 Q. -- in the summer of 2004?
 11 A. Yes. He was my boss.
 12 Q. He was your boss?
 13 A. Yes.
 14 Q. So you as a member of the credit team
 15 reported to Mr. Nectow, who was part of
 16 the portfolio management?
 17 A. He was in charge of it.
 18 Q. So he was in charge of portfolio
 19 management. Is he the person to whom you
 20 reported?
 21 A. Yes.
 22 Q. And who worked for you?
 23 A. No one.
 24 Q. You mentioned that you worked with

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1 investment officers, including Mr. Malik.
 2 Did you work with any other personnel in
 3 -- at John Hancock in connection with your
 4 job?
 5 MR. POPEO: Objection.
 6 A. There were other people in the department.
 7 I'm not sure what you need to know.
 8 Q. On the credit team?
 9 A. The credit team, Jim Rosen was part of the
 10 credit team and Joan Falvey.
 11 Q. What is that last name? Joan?
 12 A. Falvey. She is no longer with the
 13 company.
 14 Q. Did they both have the same level of
 15 recommendation authority as you?
 16 A. Well, it is not a level. You just -- you
 17 are one of the recommenders.
 18 Q. Okay. Were they both recommenders?
 19 A. Yes. At that time.
 20 Q. Is Mr. Rosen still with the company?
 21 A. Yes.
 22 Q. Does he still have his same job duties and
 23 responsibilities?
 24 A. No. He has been promoted.

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1 Q. And what is his job now?
 2 A. He is AVP. He is a VP of the credit team.
 3 Q. And Ms. Falvey is no longer with the
 4 company?
 5 A. Correct.
 6 Q. What are the circumstances of her
 7 departure?
 8 MR. POPEO: Objection.
 9 If you know.
 10 A. She just left on her own. I know that
 11 much.
 12 Q. Has she been replaced?
 13 A. No.
 14 Q. So the credit team previously was headed
 15 by Mr. Nectow and included you, Mr. Rosen,
 16 and Ms. Falvey. And who has replaced
 17 Mr. Nectow?
 18 MR. POPEO: Objection.
 19 THE WITNESS: Do you want me to
 20 answer it?
 21 MR. POPEO: Yes. Please.
 22 A. I don't know that anybody has. Bill
 23 McPadden is kind of in that slot. There
 24 was a whole reorganization.

1 that topic?
 2 A. Yes.
 3 Q. And what, if anything, have you done to
 4 prepare for your testimony on that topic?
 5 A. I haven't done anything.
 6 Q. And can you report to me what, if any,
 7 differences there are in the policies,
 8 guidelines, requirements, targets,
 9 practices, processes or methods that apply
 10 to the making of mortgage loans by John
 11 Hancock?
 12 A. Any differences from the Manulife?
 13 Q. From the prior.
 14 A. From the previous underwriting?
 15 Q. Yes, yes.
 16 A. I can't recall any differences.
 17 Q. Okay.
 18 MR. SCHER: Mark this.
 19 (Multipage documents, headed
 20 John Hancock Life Insurance
 21 Company, Investment
 22 Number 6518467, JH 01128
 23 through 01148 marked exhibit
 24 number 1 for identification.)

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1 Q. Okay.
 2 A. I don't know if you could say somebody
 3 replaced somebody else or they just did a
 4 reorg.
 5 Q. When did that reorganization occur?
 6 A. You know what? I don't remember.
 7 Q. Was it in 2005?
 8 A. It might have been. I can't remember when
 9 Barry left. How bad is that? I don't
 10 remember.
 11 Q. Earlier I reviewed the topics for which
 12 you had been designated as the 30(b)(6)
 13 designee. There is a piece of topic
 14 number 3 for which you have been
 15 designated, and that is "the policies,
 16 guidelines, requirements, targets,
 17 practices, processes or methods that apply
 18 to the making of mortgage loans by John
 19 Hancock and any differences in any of the
 20 foregoing before and after April 28,
 21 2004," and you have been designated for
 22 the period after April 28, 2004.
 23 Are you aware that you have been
 24 designated as the 30(b)(6) designee on

1 MR. SCHER: I am going to
 2 apologize in advance. There is some of my
 3 handwriting on it, so I don't know how
 4 much of this -- I don't think I have
 5 written that much. I think I wrote
 6 "credit approval" at the top.
 7 MR. POPEO: Of course your
 8 writing on the document constitutes an
 9 absolute waiver of all privilege?
 10 MR. SCHER: Exactly. Exactly.
 11 (Laughter.)
 12 BY MR. SCHER:
 13 Q. Let me show you what I have had marked as
 14 Coyne exhibit one.
 15 (Handing exhibit number 1 to the
 16 witness.)
 17 Q. And I ask you to take a moment and review
 18 it and then tell me whether this is the
 19 approval document to which you made
 20 reference in your earlier testimony.
 21 MR. POPEO: Objection.
 22 You can answer the question.
 23 A. The approval document at the time this was
 24 approved or the approval document now?

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1 Q. At the time it was approved.
 2 (Pause.)
 3 (The witness viewing exhibit
 4 number 1.)
 5 A. Yes.
 6 Q. What is the approval document now?
 7 A. Slightly different.
 8 Q. In what respect is it different? Can you
 9 recall?
 10 A. Yes. We don't have this on the fronts.
 11 It is now in the back.
 12 Q. I see. That is why you said you signed on
 13 the back?
 14 A. Yes. I didn't realize, because it has
 15 been so long --
 16 Q. That's okay.
 17 A. -- that we used to sign on the front.
 18 Q. So the two pages that are JH 1128 and 1129
 19 in the new process are at the back of the
 20 document?
 21 A. Well, the signature page is at the back of
 22 the document, the last page.
 23 Q. Okay.
 24 A. And this information is just incorporated

1 A. Yes.
 2 Q. And on the second sheet of the document is
 3 your signature on August 6, 2004?
 4 A. It looks like my signature. Yes.
 5 Q. Okay. Now looking at this document, do
 6 you have any recollection of the loan
 7 credit approval that John Hancock
 8 considered in late July-early August 2004?
 9 A. No.
 10 Q. Do you recall the Avenel project?
 11 A. No.
 12 Q. Do you recall in connection with the
 13 Avenel project any introduction of a new
 14 condition or conditions for the
 15 disbursement of the loan?
 16 MR. POPEO: Objection.
 17 A. No.
 18 Q. Do you recall the introduction of a
 19 10 percent breakeven in this -- in
 20 connection with this loan?
 21 MR. POPEO: Objection.
 22 A. No.
 23 Q. Do you know what the 10 percent breakeven
 24 requirement is?

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1 on this front page.
 2 Q. I see.
 3 A. So it -- it has --
 4 Q. "On this front page" is the JH 1130?
 5 A. Yes.
 6 Q. Okay. All right. So now --
 7 A. And this is different, too. You have a
 8 lot more narrative.
 9 Q. You have a lot more narrative now than you
 10 did then?
 11 A. It is the same narrative as is in here.
 12 Q. Okay.
 13 A. It is just taken out of boxes, and it is
 14 just free-flowing form. It contains all
 15 the same information. It is just in a
 16 different format.
 17 Q. Okay.
 18 A. But it is in essence the same -- the same
 19 information to recommend a loan. It is
 20 just presented differently.
 21 Q. So my original question was: Is this the
 22 approval document at the time?
 23 A. At the time.
 24 Q. At the time?

1 A. Yes.
 2 Q. And can you tell me was that a requirement
 3 of John Hancock prior to acquisition by
 4 Manulife? Was a 10 percent breakeven a
 5 requirement of John Hancock prior to the
 6 acquisition by Manulife?
 7 MR. POPEO: I object to the
 8 form.
 9 You may answer the question.
 10 THE WITNESS: Excuse me?
 11 MR. POPEO: You can answer it.
 12 THE WITNESS: Oh.
 13 A. No.
 14 Q. Was it a requirement of John Hancock after
 15 the acquisition by Manulife?
 16 A. Yes.
 17 Q. How was the introduction of the 10 percent
 18 breakeven as a requirement by Manulife
 19 after acquisition made known to you?
 20 MR. POPEO: Objection.
 21 A. I can't recall how it was made known.
 22 Q. Were there any other conditions for
 23 disbursement in addition to the 10 percent
 24 breakeven that were introduced subsequent

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1 to the acquisition of John Hancock by
 2 Manulife --
 3 A. No.
 4 Q. -- of which you're aware?
 5 MR. POPEO: Objection.
 6 Q. No?
 7 A. Not that I'm aware.
 8 Q. Seeing this document, Coyne 1, and seeing
 9 that the 10 percent breakeven is
 10 interlineated, that is it is written in
 11 after the document was typed, does that
 12 refresh your recollection that the
 13 10 percent breakeven requirement was
 14 introduced at or -- during the course of
 15 the summer of 2004?
 16 MR. POPEO: Objection.
 17 A. No.
 18 Q. Is that your handwriting?
 19 A. No.
 20 Q. Do you know whose handwriting it is?
 21 A. I don't.
 22 Q. Do you know who required that the
 23 10 percent breakeven be included in the
 24 approval document?

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1 MR. POPEO: Objection.
 2 A. I don't.
 3 Q. Do you know why the breakeven -- the
 4 10 percent breakeven was required to be
 5 included in the approval document?
 6 MR. POPEO: Objection.
 7 A. No.
 8 Q. Do you know whether you recommended this
 9 loan document -- approval document, sorry,
 10 whether you recommended it on with or
 11 without the 10 percent breakeven in it?
 12 A. I don't recall.
 13 Q. What is the source of the information
 14 contained -- who prepares the loan
 15 document -- I am sorry -- this approval
 16 document?
 17 MR. POPEO: Who prepared this
 18 very one or who is responsible for
 19 preparing them generally?
 20 Q. Who prepared this very one?
 21 A. I don't know.
 22 Q. The investment officer?
 23 A. I would think it was Mr. Malik.
 24 Q. And who generally prepares the approval

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1 document?
 2 A. The investment officer.
 3 Q. Okay. Do you have any reason to believe
 4 it wasn't the investment officer,
 5 Mr. Malik, in this case?
 6 A. No.
 7 Q. Do you recall whether subsequent to the
 8 recommending of this loan that there was a
 9 pickup or a problem in the loan approval
 10 process?
 11 MR. POPEO: Objection.
 12 A. No, I don't.
 13 MR. POPEO: We have been going
 14 about an hour. When you come to a
 15 convenient place, let's take a break.
 16 MR. SCHER: Okay. Would you
 17 mark this as the next exhibit?
 18 (Two-page e-mail chain, most
 19 recent e-mail dated August 11,
 20 2004, to Mr. Ferry from
 21 Mr. Malik marked exhibit
 22 number 2 for identification.)
 23 BY MR. SCHER:
 24 Q. I will show you what I have marked as

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1 Coyne exhibit 2.
 2 (Handing exhibit number 2 to the
 3 witness.)
 4 Q. Again I apologize. The handwriting on
 5 credit app by your name is my handwriting.
 6 A. Okay.
 7 Q. If you take a moment, it appears to be a
 8 copy of an e-mail stream. The first
 9 e-mail is the one I am directing your
 10 attention to. It is from Mr. Malik to
 11 Ivor Thomas with copies to you and
 12 Mr. Henderson.
 13 Do you see that?
 14 A. Um-hmm. Yes.
 15 Q. Have you any recollection of receiving
 16 that e-mail from Mr. Malik on or about
 17 August 11, 2004?
 18 A. No recollection.
 19 Q. Do you recall that after you had
 20 recommended this loan on August 6, 2004,
 21 there were further communications with
 22 respect to reducing the reserves on the
 23 unit to \$150?
 24 MR. POPEO: Objection.

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1 A. I don't recall.
 2 Q. Can you tell me what the document is that
 3 is the e-mail, what -- is this a form that
 4 is used at John Hancock at or about that
 5 time, the e-mail, with the subject, the
 6 borrower information, the rating
 7 information, the status, not funded, and
 8 the approval provision at the bottom?
 9 MR. POPEO: Objection.
 10 You can answer.
 11 A. Is it a form of -- a method we use?
 12 Q. Yes.
 13 A. Not to my knowledge.
 14 Q. Is this kind of the only time you have
 15 ever seen it?
 16 A. I can't say that. I mean my name is on
 17 it. I don't recall seeing this one, so.
 18 Q. Okay. Have you ever been asked to approve
 19 or recommend approval of a loan on a
 20 document of this form?
 21 MR. POPEO: Objection.
 22 A. No. You -- you generate another one of
 23 these --
 24 (Pointing to exhibit number 1.)

1 A. No.
 2 MR. POPEO: Referencing?
 3 THE WITNESS: Referencing
 4 Coyne 2. No, I do not.
 5 MR. SCHER: Mark this.
 6 (Multipage documents, headed
 7 John Hancock Life Insurance
 8 Company, Investment
 9 Number 6518467, JH 00405
 10 through 00425 marked exhibit
 11 number 3 for identification.)
 12 BY MR. SCHER:
 13 Q. I will show you what I have had marked as
 14 Coyne exhibit 3.
 15 (Handing exhibit number 3 to the
 16 witness.)
 17 Q. And that appears to me to be another
 18 version of the approval document. Do I
 19 have that right?
 20 A. Yes. That's what it looks like.
 21 Q. And on this one, you will see that your
 22 signature, which appears on page JH 00406,
 23 is dated August 16, '04. Do you see that?
 24 A. Yes.

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1 A. -- to sign off on. This isn't acceptable.
 2 Q. Okay. And a "these" is an approval
 3 document that is Coyne 1; right?
 4 A. This is an approval document, correct.
 5 (Pointing to exhibit number 1.)
 6 MR. POPEO: Coyne 1?
 7 Q. Coyne 1?
 8 A. Coyne 1.
 9 MR. POPEO: Why don't we take --
 10 if you are going to go to another
 11 document, why don't we take a break.
 12 MR. SCHER: Yes. Let's take a
 13 break.
 14 (Recess taken at 10:04 a.m.)
 15 (Recess ended at 10:10 a.m.)
 16 BY MR. SCHER:
 17 Q. After you received Coyne 2, which you
 18 don't recall receiving, do you recall
 19 having any conversations with anyone about
 20 that document or the contents of that
 21 document?
 22 A. About this document?
 23 (Pointing to Coyne exhibit
 24 number 2.)

1 Q. And again this one has typed in the box on
 2 the first page of Coyne 3 the letters
 3 "NCF," which were interlineated on the
 4 earlier version?
 5 A. Yes.
 6 Q. And the 10 percent breakeven? Do you see
 7 that?
 8 A. Yes.
 9 Q. Does reviewing this refresh your
 10 recollection that there were in fact two
 11 approval documents on this loan?
 12 A. I can see there are two, but I don't
 13 recall it.
 14 Q. And do you recall reviewing this income,
 15 expense, and loan analysis, or any part of
 16 this loan approval document which -- do
 17 you have any recollection at all of
 18 reviewing this second version of the
 19 approval document?
 20 A. No, I don't. I mean typically the
 21 investment officer, if they are going to
 22 ask you to sign it again, they point out
 23 the things that are different. Now I
 24 don't recall that he did that, but that's

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1 -- because we have many versions of
2 approval documents. Changes happen before
3 the final approval. So they give it back
4 to you to sign. They may say, "I did
5 this, I lowered the reserves," or
6 whatever, "sign it again."
7 Q. As part of your duties and
8 responsibilities at John Hancock in the
9 summer of 2004, was it your responsibility
10 to make certain that the investment
11 officer had secured the acceptance of the
12 borrower to any terms and conditions
13 contained in the approval document?

14 MR. POPEO: Objection.

15 A. No. That wasn't -- that wasn't my job.
16 Q. Was it John Hancock's policy and procedure
17 to in fact have the investment officer
18 secure the approval of the borrower for
19 any changes in the terms and conditions of
20 the loan application?

21 MR. POPEO: Objection.

22 A. This isn't what governs. The borrower is
23 not concerned with that. They are
24 concerned with what is in the commitment.

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1 So the borrower doesn't even see this.
2 (Pointing to Coyne exhibit
3 number 3.)
4 A. This is for us. So the borrower is not
5 concerned with what we require. He just
6 wants to know if we are going to fund the
7 loan or not.
8 Q. And what Coyne 2 and Coyne 3 represent --
9 I might have the numbers wrong -- I guess
10 it is Coyne 1 and Coyne 3 represent the
11 approval documents, those documents are
12 what the John Hancock will require in
13 order to fund the loan? Is --
14 A. No.
15 Q. Is that right?
16 A. No. That's not right. What is required
17 is in the loan commitment. These are just
18 how we got comfortable with the risk of
19 any loan. This is what we determine, and
20 then whatever gets in the loan commitment
21 is what the borrower knows about and cares
22 about, and that is how we fund the loan.
23 Q. So is it your testimony that there is or
24 there could be no relationship whatsoever

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1 between the approval document and the loan
2 application?

3 MR. POPEO: Objection.

4 A. I don't know what you mean by "no
5 relationship."

6 Q. Could there be a requirement in the
7 approval document that there be a
8 10 percent constant and that that
9 requirement not be contained in the loan
10 application?

11 MR. POPEO: Objection.

12 A. The 10 percent constant is an assessment
13 of risk for Hancock. Again just what's in
14 the commitment, if we're going to give
15 them 50 million, 100 million, 20 million,
16 that's all they care about. They don't
17 care how we got there. They just want to
18 know what we're going to give them.

19 So none of this stuff -- not
20 none. But this is our underwriting to get
21 whoever the top approver is comfortable
22 that this is a good loan to make. The
23 loan commitment is separate. That's just
24 the dollar amount and, you know, any other

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1 condition.

2 Q. When the approval document sets forth the
3 disbursement requirements, does that mean
4 what it says, that those are the
5 requirements for disbursement?

6 MR. POPEO: Objection.

7 A. What do you mean "does that mean what it
8 says"?

9 Q. In other words, are disbursement
10 requirements the requirements for
11 disbursement?

12 A. No. Those are the requirements for how it
13 got approved. Quite frequently it can be
14 different. You know, if you have a
15 requirement in here that, you know, your
16 rents are at least, in this example, say
17 4,221,126, but then they are 4 million,
18 you can still fund the loan. You just
19 have to get somebody to sign off on it.
20 These are just what you think at the time
21 you get it approved.

22 Q. I see.

23 A. And then when you fund, they can be
24 different.

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1 Q. And all you would have to do is get
2 approval of somebody if that change
3 remained?
4 A. Well, sometimes they are immaterial
5 changes, and you just -- you know, not
6 everything that is in here -- you know,
7 again these are just guidelines to get our
8 guys comfortable with making a loan of any
9 loan amount.
10 Q. Right. But if the --
11 A. You may still choose to fund it if you
12 don't meet them all.
13 Q. Right.
14 A. Because they are just guidelines.
15 Q. And the choice to fund it would be made at
16 the time the request to fund the loan is
17 made; right?
18 A. At the time of funding.
19 Q. Right. And that in this case was
20 contemplated to be August of 2005; right?
21 MR. POPEO: Objection.
22 You can answer the question.
23 A. I don't remember when it was supposed to
24 fund. My involvement ended when it was

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1 approved.
2 Q. Okay. At the time of funding, if there
3 were requirements contained in the
4 approval document that were not met by the
5 borrower at the time of funding, those
6 requirements could be modified or changed
7 by John Hancock at that time; is that
8 right?
9 MR. POPEO: Objection.
10 A. I don't view these as requirements. I
11 mean these are what you think your hurdles
12 are going to be and that you are going to
13 meet them.
14 Q. Right.
15 A. But when you fund, you look at it when it
16 -- at the time you're going to fund and
17 where you are.
18 Q. I see.
19 A. And then you fund.
20 Q. So the decision to fund is made at the
21 time of funding; is that right?
22 MR. POPEO: I object to the form
23 of the question.
24 A. I don't know. I don't think that's right.

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1 No. That isn't right.
2 Q. Did you --
3 A. We agreed to give -- in this particular
4 case, we agreed to fund \$32 million.
5 Q. Right.
6 A. That's what we were going to give them,
7 32 million.
8 Q. And at the time of funding -- at the time
9 of funding, no matter what they're --
10 A. It doesn't matter what this says.
11 Q. It doesn't matter?
12 A. It matters what the loan commitment says.
13 If we agreed to give them 32 million, we
14 will give them 32 million.
15 Q. And if you agreed to give them 32 million
16 subject to certain ratios, then it would
17 be 32 million subject to certain loan
18 sizing ratios, for example; right?
19 MR. POPEO: Objection.
20 You can answer the question.
21 A. It is whatever is spelled out in the
22 commitment. I don't have it in front of
23 me, so I don't know what they were
24 required to meet.

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1 Q. You never had it in front of you?
2 A. Right, right.
3 Q. So if I were to show it to you today, it
4 would be the first time you had seen it?
5 A. Correct.
6 MR. SCHER: Can we mark this as
7 the next exhibit?
8 (One-page memorandum dated
9 August 17, 2004, to Mr. Malik
10 from Ms. Coyne marked exhibit
11 number 4 for identification.)
12 BY MR. SCHER:
13 Q. I will show you what I have marked as
14 Coyne exhibit 4.
15 (Handing exhibit number 4 to the
16 witness.)
17 Q. That is a memorandum from you to Timothy
18 Malik showing copies to a number of
19 people, Arthur Francis, Frank Vitukevich,
20 Patricia Wilson, and Kolby Mitnik. Do I
21 have that right?
22 A. Vitukevich. Yes. That is a tough one.
23 Q. I was close.
24 And this was prepared by you;

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1 right?

2 A. Yes.

3 Q. And this is the one-page letter that you

4 described in your earlier testimony which

5 you attach to the approval document? Am I

6 right about that?

7 MR. POPEO: Objection.

8 You can answer the question.

9 A. Yes. It is the one-page letter I

10 attached.

11 Q. Okay. Now this makes reference to "The

12 above-referenced mortgage was approved on

13 August 10, 2004." Do you see that?

14 A. Yes.

15 Q. So if you look at Coyne exhibit 1, which I

16 will do in a moment, which is Bates

17 stamped JH 1128 --

18 (Handing Exhibit number 1 to the

19 witness.)

20 Q. -- it shows that the latest signature is

21 August 10, 2004; right?

22 A. Yes.

23 Q. If you look at Coyne 3, you will see that

24 the latest signature is August 16, 2004?

1 Q. Again when it says disbursement

2 requirements in item number 8, does that

3 mean those are the requirements before

4 disbursal?

5 MR. POPEO: Objection.

6 A. No.

7 Q. Why do you use the phrase "disbursement

8 requirements" if that is not a

9 disbursement requirement?

10 A. It is a Manulife-originated letter that we

11 just tried to mimic.

12 Q. I see.

13 A. It was right after the merger, and we were

14 trying to do it their way.

15 Q. What should that be called? What is it

16 called now?

17 A. It is probably still called disbursement

18 requirements. I would have to have a

19 current one in front of me to confirm

20 that.

21 Q. Arthur Francis is shown as a carbon copy

22 recipient of this, and he is in the

23 closing department; is that right?

24 A. He is in charge of the closing department.

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1 A. Correct.

2 Q. And my question is was the mortgage loan

3 approved on August 10, 2004, or August 16?

4 A. Well, the final approval looks like it was

5 the 16th. That probably should have said

6 the 16th.

7 (Pointing to exhibit number 4.)

8 Q. That may have been a mistake, that?

9 A. It could have been. Yes.

10 Q. Did it make any difference?

11 A. Not as far as I'm concerned.

12 Q. And where did you obtain the information

13 for this letter? Was it from the Coyne 1

14 or Coyne 3 --

15 MR. POPEO: Objection.

16 Q. -- or somewhere else?

17 A. Oh, it was probably the latest one.

18 Probably Coyne 3.

19 Q. Could you take a moment and verify that?

20 (Pause.)

21 (The witness viewing exhibits.)

22 A. Well, Coyne 3, the reserves underwritten

23 at \$150 a unit, so I am guessing that I

24 took it from number 3.

1 Q. And is it accurate to say that he -- this

2 is his only information regarding this

3 loan? This is his first information

4 regarding this loan?

5 MR. POPEO: I object to the

6 form.

7 You can answer, if you know.

8 A. I don't know. I can't say that.

9 Q. In the Manulife -- in the John Hancock

10 process and procedure, when does the

11 closing department learn of the approval

12 of a loan?

13 MR. POPEO: Objection.

14 A. They get a copy of this letter and this

15 approval. I don't know when. That's the

16 first time they hear that it's approved.

17 I don't know when their involvement

18 begins.

19 Q. And the other three people, who are they?

20 A. Frank was in systems. I don't -- to be

21 honest with you, I don't know why he

22 needed it.

23 Tricia Wilson is gone, and Kolby

24 is gone.

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1 Q. But do you know why either of them needed
2 it?

3 A. You know, I don't know why they needed it.
4 I think they must have had to do something
5 somewhere, but I don't know what it is.

6 Q. Do you know who Jessica Yaffie Leveroni
7 was?

8 A. She was one of the in-house counsel.
9 Q. And was she an in-house counsel who
10 operated on behalf of John Hancock in
11 connection with preparing documents for
12 closing of loans?

13 MR. POPEO: Objection.

14 A. For this loan?

15 Q. For any loan.

16 A. She is one of our in-house counsel.
17 Q. Okay. She is no longer with the company,
18 is she?

19 A. No.

20 Q. And do you know is she competent to
21 describe the -- was she competent? Was
22 she fired from her position at John
23 Hancock?

24 MR. POPEO: Objection.

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1 A. I don't know the answer to that.
2 Q. Would it surprise you if I were to tell
3 you that she considered the approval of
4 the loan to be conditional in May of 2005?

5 MR. POPEO: Objection.

6 A. Would it surprise me? In what way?
7 Q. In other words, is it your understanding
8 that the loan was approved as of
9 August 17, 2004, when you prepared your
10 approval letter?

11 A. It was my understanding --

12 MR. POPEO: Objection.

13 You can answer the question.
14 You can tell him what your understanding
15 was.

16 A. My understanding was that the loan was
17 approved.

18 Q. As of?

19 A. October -- August.

20 Q. 17th?

21 A. Yes.

22 Q. The date of your letter?

23 A. Well, 16th actually, the date that it was
24 actually approved.

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1 Q. And you say that any of the conditions
2 contained in the approval that you signed
3 could be waived at the time of closing?

4 MR. POPEO: Objection to the
5 form of the question.
6 You can answer.

7 A. Well, the -- there are internal
8 conditions.

9 Q. Yes.

10 A. They're not the conditions that the
11 borrower understands.

12 Q. Those conditions --

13 A. Those are different. Those are the
14 conditions. These are just our comfort
15 level, how we got comfortable, where we
16 think it needs to be.

17 Q. And anything that is contained in your
18 internal conditions could have been waived
19 at the time of the funding of the loan?

20 MR. POPEO: Objection.

21 A. Could have been waived? They can be
22 changed.

23 Q. Changed?

24 A. Yes. They can be changed.

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1 Q. So that if at the time of the funding of
2 the loan the investment officer sought to
3 have one or more of the conditions
4 changed, that could have been achieved?

5 MR. POPEO: Objection to the
6 form of the question. Are we talking
7 about the commitment letter conditions, or
8 are you talking about the conditions on
9 this form here?

10 (Pointing to exhibit number 4.)

11 MR. SCHER: On the form. On the
12 -- sorry -- the approval letter.

13 MR. POPEO: I think we are
14 having confusion about --

15 THE WITNESS: Yes. I don't
16 think I understand the --

17 BY MR. SCHER:

18 Q. Let me ask it.

19 A. These are -- you know, you have got to
20 look at the commitment letter to fund the
21 loan. These are -- you know, these are
22 put aside.

23 Q. A commitment letter to fund the loan, are
24 you talking about the loan application?

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1 A. Well, we call it the commitment. Every
2 application once it gets executed is a
3 commitment. I think I need to see that to
4 see what needed to be done to fund this
5 particular loan.
6 Q. So whatever is contained in that, that is
7 the loan application signed by John
8 Hancock which you say constitutes the
9 commitment?
10 A. Correct.
11 Q. We will call that the commitment letter.
12 That is what you call it?
13 A. No. It is the commitment.
14 Q. The commitment agreement?
15 A. The commitment.
16 Q. The commitment?
17 A. It is the commitment.
18 Q. So whatever is contained in that
19 commitment is what John Hancock -- or
20 contains the terms and conditions of the
21 funding of the loan?
22 A. Yes.
23 Q. And that the whatever is contained in the
24 loan approval and in particular

1 so if they are going to use outside
2 counsel, they know what the deal is.
3 Q. So where in the process does John Hancock
4 provide a copy of the commitment to
5 persons at John Hancock who are
6 responsible for disbursing loans?
7 A. Well, that is different. The people who
8 disburse -- the closing -- once it is
9 approved, the commitment is signed by
10 somebody from Hancock, because we already
11 have the borrower's signature. It goes
12 over to closing. They get everything at
13 the same time.
14 Q. They get?
15 A. They get a copy of the commitment and a
16 copy of the approval.
17 Q. So they get a copy of your loan approval,
18 which is appended to the recommendation
19 document, that August 16 and August 10
20 document; right?
21 A. Well, there is only one document now. The
22 August 10th is gone, and we just have the
23 August 16th. That is the approval
24 document.

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1 disbursement requirements can be waived or
2 modified or changed at the time of the
3 funding of the loan?
4 MR. POPEO: I object to the
5 form.
6 A. We're done with these.
7 (Pointing to exhibit numbers 1
8 through 4.)
9 A. They don't come into play at the time of
10 funding. Just the commitment.
11 Q. Why do you send those to the closing
12 person at John Hancock after the -- and
13 not send the commitment to the closing
14 person?
15 MR. POPEO: Objection.
16 A. The closing person does get a copy of the
17 commitment.
18 Q. Oh, where is that? That is part of the
19 process?
20 A. Yes. That is part of the process. They
21 get a copy of the commitment.
22 Q. When was --
23 A. Because they have to refer it down to the
24 attorneys so they know what the deal is,

1 Q. Okay. So they get the approval document,
2 and they get the commitment document;
3 right?
4 A. Correct.
5 Q. And they take those documents, and that is
6 what they use to prepare for the closing
7 and funding of the loan?
8 A. No.
9 Q. Is that right?
10 MR. POPEO: Objection.
11 A. No. That is not right. They just use the
12 commitment.
13 Q. Why do they get the approval?
14 A. Why do they get it?
15 Q. Yes.
16 A. I mean you have to have an approval so you
17 know we actually looked at it. You just
18 can't give them a commitment and say we
19 are going to fund and not have any thought
20 that we actually looked at the deal to see
21 if it works.
22 Q. All right.
23 A. This is for us to make sure we are
24 comfortable with whatever loan amount we

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1 are going to ultimately fund.
 2 Q. Well, why does the closing person need to
 3 see the data upon which you made the
 4 decision to approve the loan? Why doesn't
 5 the closing person simply need a copy of
 6 the commitment signed by John Hancock?
 7 MR. POPEO: Objection.
 8 A. Well, there is a lot of information in
 9 here, like where the property is located,
 10 the size of it, you know, for insurance
 11 requirements, there is a whole host of
 12 things that are included in our approval
 13 document that isn't in the commitment.
 14 Q. As well as 10 percent constant and --
 15 A. But --
 16 Q. -- some other requirements as well?
 17 A. Well --
 18 Q. So how do you know which is -- so what are
 19 you telling me? That some of the
 20 information contained in the approval
 21 letter is used by the closing person and
 22 some isn't?
 23 MR. POPEO: I object to the form
 24 of the question.

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1 If you understand it, you can
 2 answer it.
 3 A. That's not what I am telling you. If you
 4 want to --
 5 Q. Yes.
 6 A. Well, I am not telling you that. I'm --
 7 MR. POPEO: Stop.
 8 A. If you want to ask me a question, ask me a
 9 question.
 10 Q. All right. I am asking you a question.
 11 The question is what does the closing
 12 person, the person who gets a copy of your
 13 letter, Arthur Francis' department, what
 14 does he need your approval letter for.
 15 A. I don't know. I'm not a closer. So I
 16 don't -- I don't know their functions.
 17 Q. So you don't know what the policies or
 18 procedures of John Hancock are in
 19 connection with closing a loan; right?
 20 MR. POPEO: Objection.
 21 A. I'm not a closer, so I don't know what
 22 they do from day to day. I only know what
 23 my responsibilities are.
 24 Q. But you do know that they get a copy of

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1 the commitment?
 2 A. I do know that. Yes.
 3 Q. How do you know that?
 4 A. Because I used to be an IO, and I used to
 5 provide them with one.
 6 Q. So the IO provides a copy of the
 7 commitment to the closing person; right?
 8 A. Through their admin.
 9 Q. And you -- you as the credit person --
 10 provides a copy of the loan approval and
 11 the approval letter?
 12 A. I don't give them a copy of the closing.
 13 Q. You don't? You don't?
 14 A. When I sign -- attach my letter to the
 15 approval, give it back to the IO, and then
 16 they do what they do with it.
 17 Q. But in this case you sent a copy to the
 18 closer?
 19 A. No, no. They are copied. I didn't send
 20 it. I give it back to the IO.
 21 Q. All right.
 22 A. And then they will have their admin
 23 disperse the copies to whoever gets them.
 24 Q. But you know that the IO distributes to

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1 the closer both a copy of the approval
 2 letter and the attachment as well as the
 3 commitment?
 4 A. They're supposed to. Yes.
 5 Q. And do you know what the procedures of a
 6 closer are with respect to deciding what
 7 information from the approval letter they
 8 are to use and what information they're
 9 not to use?
 10 MR. POPEO: Objection.
 11 A. No.
 12 Q. If the numbers in the commitment are
 13 materially different than the numbers in
 14 the approval letter, your testimony is
 15 that the commitment controls?
 16 MR. POPEO: Objection.
 17 Q. Is that right?
 18 MR. POPEO: Objection.
 19 You can answer the question.
 20 A. Can you repeat it for me?
 21 Q. Yes. Let's take a particular example. If
 22 the reserve requirement in the commitment
 23 is \$250 a unit and the reserve requirement
 24 in the approval letter is \$150 a unit,

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1 what is -- it is your testimony that the
 2 reserve requirement is which of those two?
 3 MR. POPEO: I object to the
 4 form.
 5 You can answer the question.
 6 A. The \$250 doesn't show up in the
 7 commitment. That's a tool that we use to
 8 assess risk. So I don't believe -- and I
 9 -- I don't have it in front of me. I need
 10 to look at it again, because I don't have
 11 that memorized. It is not in there. What
 12 is typically in the commitment is the loan
 13 amount, the debt service coverage, and the
 14 loan to value.
 15 Q. Well, you just said that you don't have it
 16 in front of you and that you need to look
 17 at it again. Have you looked at it? Have
 18 you looked at the --
 19 A. This particular one?
 20 Q. Yes.
 21 A. No, no.
 22 Q. Okay.
 23 A. No, I haven't looked at that.
 24 Q. Okay.

1 BY MR. SCHER:
 2 Q. I show you what has been marked as Coyne
 3 exhibit 5. It is a copy of the
 4 commitment.
 5 (Handing exhibit number 5 to the
 6 witness.)
 7 Q. The first question is take a look at it
 8 and tell me if you have ever seen it
 9 before today.
 10 (Pause.)
 11 (The witness viewing exhibit
 12 number 5.)
 13 A. I have not.
 14 Q. Okay. Take a look at page JH 01005.
 15 (Witness complying.)
 16 MR. POPEO: Have you got it?
 17 THE WITNESS: Yes.
 18 Q. Do you see that there is a reserve set
 19 forth in this exhibit?
 20 A. I see examples --
 21 Q. Okay.
 22 A. -- of a reserve.
 23 Q. Right. And this is part of the loan
 24 commitment; right?

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1 A. I am familiar with our commitment. I
 2 haven't looked at that one. We don't list
 3 -- again this is all our stuff for us to
 4 get comfortable. It doesn't make it into
 5 the commitment.
 6 Q. Okay.
 7 A. The borrower would have no idea if we used
 8 800 dollars for reserves or 50 bucks for
 9 reserves.
 10 Q. Let's go with my hypothetical. I will
 11 show you the loan commitment if you want
 12 to, but if you have never seen it before,
 13 I don't know what purpose it would serve.
 14 MR. POPEO: Objection.
 15 Q. Do you want to take a look at it?
 16 A. You said "go with my hypothetical." I
 17 don't hear a question.
 18 MR. SCHER: Mark this.
 19 (Multipage Application to John
 20 Hancock Life Insurance Company
 21 for a First Mortgage Loan,
 22 JH 00958 through 01028 marked
 23 exhibit number 5 for
 24 identification.)

1 A. It appears to be. Yes.
 2 Q. Okay. And if I represent to you that if
 3 you did the division you would see that
 4 the loan reserves are \$250 per unit.
 5 A. Okay.
 6 Q. And you know that the approval letter
 7 contains reserves of \$150 a unit; right?
 8 A. Right.
 9 Q. Which controls?
 10 MR. POPEO: I object.
 11 You can answer.
 12 A. This is an example. This isn't saying you
 13 have to use 250. This is an example of
 14 what they would look like.
 15 Q. Okay. So --
 16 A. This is an approval to use \$150 for
 17 reserves so we can get to the loan amount.
 18 Q. What effect does the changing of the
 19 reserves have on the loan amount?
 20 A. It doesn't have any effect. I mean it is
 21 32 million. It just got us over our
 22 underwriting hurdle of the 10 percent
 23 constant.
 24 Q. So it is your testimony that what this

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1 loan commitment constitutes is a
 2 commitment to loan \$32 million in August
 3 of 2005? Is that what you are saying?
 4 A. Correct.
 5 Q. No ifs, ands, or buts?
 6 A. I don't see any.
 7 Q. So that the fact that this loan commitment
 8 contains ratios that need to be met, those
 9 ratios don't need to be met with respect
 10 to loan to value, with respect to debt
 11 service coverage? They were -- and even
 12 though they are in the commitment, they
 13 are optional?
 14 A. Well, I see 125.
 15 MR. POPEO: Objection.
 16 THE WITNESS: Oh.
 17 Q. Right?
 18 A. I wouldn't say that. On page 17, I see
 19 one of 125.
 20 Q. That is part of the commitment then;
 21 right?
 22 A. That is part of the commitment, but it is
 23 -- in my opinion, when you get to loan
 24 closing, if it was 1.20 --

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1 Q. Right.
 2 A. -- and the powers that be still wanted to
 3 do the loan, the loan would still get
 4 funded at 32.
 5 Q. I see. What if the powers to be or the
 6 powers that be didn't want to do the loan?
 7 Then it wouldn't get funded at 32 million;
 8 right?
 9 MR. POPEO: Objection.
 10 Q. Isn't that?
 11 A. Well, I don't know. Every case is
 12 different. So I don't know the answer to
 13 that.
 14 Q. And the difference is it would have to be
 15 appraised and evaluated at the time of
 16 closing; right?
 17 MR. POPEO: Objection.
 18 A. I don't know what would happen in that
 19 case.
 20 Q. You have no idea?
 21 A. No.
 22 Q. Is there anything in the policies and
 23 procedures of John Hancock or Manulife as
 24 you have studied and reviewed them from

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1 August -- from April 28th when Manulife
 2 acquired it to August of 2005 when the
 3 closing was to have occurred that speak to
 4 this subject?
 5 MR. POPEO: Objection.
 6 A. Not that I'm aware of.
 7 Q. Now that you have had an opportunity to
 8 look at the commitment, do you agree that
 9 the commitment is not simply Manulife --
 10 John Hancock will fund a \$32 million loan
 11 on August 1, 2005, but rather contains a
 12 variety of terms and conditions that could
 13 result in the loan being in an amount less
 14 than 32 million?
 15 MR. POPEO: Objection.
 16 You can answer the question.
 17 A. No. I don't agree to that.
 18 Q. You don't? You think it was a commitment
 19 to loan at \$32 million, notwithstanding
 20 anything that is contained in the
 21 commitment to the contrary?
 22 A. That's my understanding.
 23 Q. Okay. And basically if the powers that be
 24 wanted this loan to occur on August 1,

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1 2005, it would occur at 32 million?
 2 MR. POPEO: Objection.
 3 A. Yes.
 4 Q. Is that right?
 5 A. I mean I don't know what they're going to
 6 do but.
 7 Q. Right?
 8 A. But we committed to 32 million. We have
 9 to fund 32 million.
 10 Q. To the best of your knowledge, are there
 11 policies with respect to closing, just as
 12 there are with respect to lending?
 13 A. Not to my knowledge.
 14 Q. Would you turn to page 2445 in the
 15 unmarked John Hancock real estate finance
 16 group lending guidelines, January 25, 2005
 17 document?
 18 (Witness complying.)
 19 Q. Are you familiar with this asset summary
 20 data quality review?
 21 A. No.
 22 Q. Do you have -- item 2, numbered 2, is the
 23 review stage. Is it your -- do you
 24 participate in the review stage?

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1 A. I do not.
 2 Q. Do you participate in the commitment
 3 stage?
 4 A. No. I'm out after that, after it has been
 5 approved. I don't -- I don't have
 6 anything to do with it.
 7 Q. You have nothing to do with the commitment
 8 stage, and you have nothing to do with the
 9 review stage; right?
 10 A. Correct.
 11 Q. And you have nothing to do with the
 12 closing stage; is that right?
 13 A. Correct.
 14 Q. Looking at page 2446, you see the
 15 commitment stage is described in different
 16 words. Does that refresh your
 17 recollection as to whether or not you
 18 participate in the commitment stage?
 19 MR. POPEO: I object to the
 20 form.
 21 A. No, it does not.
 22 Q. Do you see the resource keys identified in
 23 that box? The closing analyst, the
 24 underwriter, and the portfolio manager,

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1 are you any of those?
 2 A. I am not.
 3 Q. What is your role? What is your resource
 4 described as?
 5 A. Credit officer.
 6 Q. Are you aware of an amendment, a draft
 7 amendment, to the commitment loan
 8 application prepared in this case?
 9 A. I'm not.
 10 Q. Have you been involved in instances where
 11 loan applications were amended?
 12 A. Yes.
 13 Q. What is the policy of John Hancock with
 14 respect to the amendment of a loan
 15 application? What occasions the
 16 amendment?
 17 A. On occasion if the loan is going to be
 18 extended to closing, you amend to it just
 19 say the loan -- the outside closing date
 20 is amended from X to X.
 21 Q. Any other procedures for amending a loan
 22 application of which you're aware?
 23 A. Not that I'm aware. I mean I am -- there
 24 could be, but not that I'm aware.

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1 Q. Are you -- are there any policies or
 2 procedures of John Hancock which govern
 3 when loan applications should be amended?
 4 MR. POPEO: Objection.
 5 A. Not that I'm aware of.
 6 Q. Who is in charge of that function, that is
 7 whether or not a loan application should
 8 be amended?
 9 A. The investment officer.
 10 Q. And you were an investment officer. What
 11 guided you as to whether or not a loan
 12 application should be amended?
 13 A. When I was an investment officer, again if
 14 I had to extend the closing, it wasn't
 15 going to close on time, if we were going
 16 to extend it, we have to amend it.
 17 Q. What if the amount of the loan were not
 18 going to be funded at the amount that the
 19 borrower was seeking? Would you amend the
 20 loan?
 21 MR. POPEO: Objection.
 22 A. I can't recall that happening when I was
 23 an IO.
 24 Q. Are there situations -- when you were an

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1 IO, are there situations where a
 2 modification to a loan application were
 3 considered but it was decided that it
 4 would be a, quote, deal breaker and,
 5 therefore, such a modification would not
 6 be submitted to the borrower?
 7 MR. POPEO: Objection.
 8 A. I don't really understand what you're
 9 getting at.
 10 Q. Well, what I am getting at is in this case
 11 the field officer, the man in Blue Bell,
 12 Pennsylvania, concluded that the inclusion
 13 of the 10 percent constant in the loan
 14 application would be a deal breaker; that
 15 the borrower would never sign an
 16 application that contained that provision.
 17 Are you aware of circumstances where a
 18 deal breaker was perceived by the
 19 investment officer or the field officer,
 20 and it was decided not to propose a loan
 21 application modification?
 22 MR. POPEO: Objection.
 23 Q. Has that ever happened?
 24 MR. POPEO: Objection.

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1 A. I don't really understand your question.
 2 Q. Okay.
 3 A. The 10 percent doesn't get into the
 4 commitment to my knowledge, so I don't
 5 know. I'm not sure what you're asking.
 6 Q. What if John Hancock had decided that the
 7 10 percent constant should be in the loan
 8 commitment? Have you ever seen an
 9 instance where a loan sizing requirement
 10 were included in a loan commitment?
 11 MR. POPEO: Objection.
 12 A. I haven't seen that. I mean again the
 13 constant is something we get comfortable
 14 with. If we had to -- if they wanted us
 15 to stick to that 10 percent, we couldn't
 16 get to the loan dollars, that might be a
 17 deal breaker, because someone might go
 18 somewhere else. So, you know, we -- it is
 19 a guideline, so we can adjust that if we
 20 think it is a good deal, and when you
 21 adjust it down to get that good deal, I
 22 mean the only thing the borrower cares
 23 about is his loan amount and the dollars
 24 that he wants.

1 are comfortable lending what he wants.
 2 Q. And under your criteria, under John
 3 Hancock's criteria, you can get to the
 4 loan amount that he wants? That's all you
 5 want to know?
 6 A. In this particular case?
 7 Q. Yes.
 8 A. We did --
 9 Q. That --
 10 A. We did get to the 32 million.
 11 Q. Right. And the process that was employed
 12 included the modification of the projected
 13 revenues, net operating income, reduction
 14 in the reserves? You know that; right?
 15 MR. POPEO: Objection.
 16 A. I wasn't involved in that.
 17 Q. Did you know that?
 18 A. You know, when it came to me for approval,
 19 what it was was what it was. I had no --
 20 I wasn't involved in any negotiations. I
 21 wasn't involved in how they got to it.
 22 Q. Did you --
 23 A. I was just comfortable with the number
 24 that they presented me to recommend for

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1 Q. That's what he cares about, and in this
 2 particular -- in this case, he wanted
 3 enough money to fund the repayment of his
 4 construction loan?
 5 MR. POPEO: Objection.
 6 Q. Right?
 7 A. I don't know that.
 8 Q. Well, you do know that the size of the
 9 loan is all that the borrower is
 10 interested in; right?
 11 A. That is typically what any borrower is
 12 interested in, getting to their loan
 13 amount.
 14 Q. And if there were a requirement of John
 15 Hancock that would affect the size of the
 16 loan, the borrower should know about it;
 17 right?
 18 MR. POPEO: Objection.
 19 A. No, I don't think the borrower should know
 20 about it. We need to get comfortable when
 21 we assess risk and then tell the borrower
 22 if we can get to his loan amount or not.
 23 He doesn't care how we get there in my
 24 opinion. He just wants to know that we

1 approval.
 2 Q. And you hadn't seen the loan application
 3 at all; right?
 4 A. No, I didn't.
 5 Q. The first time you saw it was today at
 6 this deposition?
 7 A. Correct.
 8 Q. Are you familiar with any policies or
 9 procedures at John Hancock with respect to
 10 yield maintenance?
 11 A. Yes.
 12 Q. And what are they? Are they contained in
 13 this document?
 14 A. I don't believe so.
 15 Q. Okay. What policies and procedures are
 16 you familiar with?
 17 A. Yield maintenance, whatever is contained
 18 in the note. That's what they have to pay
 19 for yield maintenance. I don't calculate
 20 it, but I understand how to calculate it.
 21 Q. And are you aware of the -- is there any
 22 yield which needs to be maintained from
 23 the time of the commitment to the time of
 24 the funding?

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1 MR. POPEO: Objection.
 2 A. That's not my job to understand that.
 3 Q. So you --
 4 A. Portfolio management handles all of that
 5 stuff. I don't. I don't get involved in
 6 it.
 7 Q. That is from the rate lock to the funding
 8 of the loan?
 9 A. What do you mean?
 10 Q. That is where the portfolio manager is
 11 involved?
 12 A. Well, the portfolio is in charge of when
 13 they rate lock it, allocating it to
 14 whatever account wants it or needs it.
 15 Q. Okay.
 16 A. I know they do other stuff. I just don't
 17 know what it is.
 18 Q. Okay. Do you know of any requirement by
 19 John Hancock that yield maintenance be
 20 required of borrowers at the time of rate
 21 lock?
 22 MR. POPEO: Objection.
 23 A. I don't know. Yield maintenance is
 24 something when --

1 Q. And to whom did he report?
 2 A. Ivor -- Warren Thompson, I believe.
 3 Q. And to whom did Mr. Thompson report?
 4 A. Don Guloien.
 5 Q. Where is Ivor Thomas in this hierarchy?
 6 A. I think there may have been a dotted line
 7 from Barry to Ivor, but that was never --
 8 never written anywhere, so another I'm not
 9 sure. Barry might be able to tell -- help
 10 you out with that one.
 11 Q. Ivor Thomas was a Manulife employee --
 12 A. Yes.
 13 Q. -- who came to John Hancock after the
 14 acquisition?
 15 A. Yes.
 16 Q. Are there other Manulife employees who
 17 came to John Hancock after the acquisition
 18 in the area where you worked?
 19 A. In investment and pension or right in the
 20 real estate finance group?
 21 Q. In the real estate finance group.
 22 A. No. Just Ivor and Warren.
 23 Q. Did you ever learn that the prospective
 24 borrowers had elected not to close the

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1 Q. It is in the note?
 2 A. Yes. It is in the note.
 3 Q. It is when you fund the loan?
 4 A. Well, that's what -- that's my
 5 understanding of yield maintenance.
 6 Q. Right. Can you explain why Jessica Yaffie
 7 Leveroni would say to a title company,
 8 quote, "If the lender approves the loan
 9 for \$32 million such and such needs to
 10 happen"? Do you have any idea why she
 11 would use the word "if approval is
 12 provided"?
 13 MR. POPEO: Objection.
 14 A. I have no idea.
 15 Q. She is just plain wrong?
 16 A. I --
 17 MR. POPEO: I object to the form
 18 of the question.
 19 You can answer it, if you can.
 20 A. I have no idea. I can't explain what
 21 anyone does except for me.
 22 Q. You say that Barry Nectow was your
 23 immediate supervisor?
 24 A. For a while, yes.

1 loan?
 2 A. Did I ever learn it?
 3 Q. Yes.
 4 A. No. I heard about it when I was going to
 5 be deposed.
 6 Q. So prior to your learning of the lawsuit
 7 and your having been requested as a
 8 deponent, you didn't know that the loan
 9 hadn't closed?
 10 A. No.
 11 Q. I'm right?
 12 A. You're right. Yes, I didn't know.
 13 Q. Did you have any involvement in the
 14 calculation of any losses that John
 15 Hancock may have suffered as a result of
 16 the unwinding of the commitment?
 17 MR. POPEO: Objection.
 18 A. No.
 19 MR. SCHER: Why don't we take a
 20 brief recess.
 21 (Recess taken at 11:04 a.m.)
 22 (Recess ended at 11:14 a.m.)
 23 BY MR. SCHER:
 24 Q. I would like to turn back for a moment to

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1 Coyne exhibit 1 and Coyne exhibit 3. Now
2 you recommended both of those documents,
3 and what I'm interested in knowing is what
4 did you do in order to satisfy yourself
5 that you were performing your job function
6 in recommending these two.

7 MR. POPEO: Objection.

8 You can answer the question.

9 A. One thing in particular or?

10 Q. Well, you said -- you said -- you used the
11 phrase "numbers work" or whatever. I am
12 just trying to understand what it is that
13 you did in connection with this loan
14 application that warranted you
15 recommending it on August 6th and again on
16 August 16th.

17 MR. POPEO: Objection.

18 A. I don't remember everything I did, but,
19 you know, this is my job, and I recognize
20 a good loan opportunity when I see one,
21 and I reviewed all the information that
22 was provided, and, you know, this is a
23 great loan, a great location, a great
24 property type. I recommended it.

1 Q. What I want to know is what were you
2 looking for and what did you find?

3 A. Well, there is enough in here. You look
4 for lots of stuff, I mean.

5 Q. Can you tell me?

6 A. Well, I don't know if I can tell you
7 exactly, but I mean you look to see if the
8 -- you have a good borrower, a good
9 location, a good asset type, property
10 type, you know, see if all your numbers
11 work, brand new apartments. You know, it
12 is -- it is a good -- it is a good loan.

13 I don't know if I could be more specific
14 than that. But it hit, you know, all of
15 our, you know, criteria for a good loan.

16 Q. And the criteria for a good loan are what?

17 A. Well, it is too numerous to say. I mean I
18 just rattled off a few of the main salient
19 points.

20 Q. Okay. Did the fact that this loan was a
21 forward commitment do anything -- have any
22 place in your evaluation?

23 A. No. We do forwards.

24 Q. That didn't cut one way or the other?

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1 Q. I know you recommended it, but what I am
2 trying to understand is what part of this
3 did you look at. Are there, you know, are
4 there criteria? I mean you know the
5 location, so that spoke to you. What
6 else? Are there any of these underwriting
7 criteria? Are there any of the numbers
8 that are contained in these pages? This
9 is the only information you had, right,
10 about the loan?

11 MR. POPEO: Objection. 14

12 questions there.

13 Q. The last one is: This is the only
14 document information you had about the
15 loan?

16 A. I can't say that for certain. I am
17 guessing I had pictures and maps and --
18 that I don't see attached to this.

19 (Pointing to exhibit number 1.)

20 Q. The second one has a regional map. The
21 one on Coyne 3 has a map attached to it in
22 the copy I have.

23 A. There is a lot of information in here if
24 you know what you are looking for, so.

1 A. No.

2 Q. Did the fact that the loan came to your
3 attention twice, once on August 6th and
4 once on August 16th, cause you any concern
5 or --

6 A. No.

7 Q. At the time that you reviewed them, did
8 you note that there were two submissions
9 for the same loan and try to detect what
10 the differences were between the two?

11 A. No. I think I said earlier that the IO
12 will come to you and say, "You need to
13 re-sign this because this was changed or
14 this was changed."

15 Q. But you have no recollection of that
16 having happened in connection with this
17 case?

18 A. I have no recollection.

19 Q. If you were to review Coyne 1 and Coyne 3
20 right now, could it refresh your
21 recollection as to whether or not
22 Mr. Malik came to see you and told you
23 what the differences were?

24 MR. POPEO: Objection.

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1 A. No.
 2 Q. No?
 3 A. No.
 4 Q. On page JH 1132 in Coyne 1 and JH 409 in
 5 Coyne 3, there is -- it looks like it is a
 6 second cover sheet, and it says "John
 7 Hancock Life Insurance Company, a meeting
 8 of the mortgage and real estate loan
 9 committee was held on," August 10 in the
 10 one case and August 16 in the other case,
 11 "voted to authorize the following
 12 investment."
 13 There was no meeting, was there?
 14 A. No, I don't recall a meeting. We had done
 15 away with meetings, I believe, at that
 16 point.
 17 Q. And you had the signature process; is that
 18 correct?
 19 A. Correct.
 20 Q. Where you would recommend and pass it on
 21 to the next signatory?
 22 A. Correct.
 23 Q. On page 1133, and 410, there is other loan
 24 information, memorandum section. Do you

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1 see that?
 2 A. Yes.
 3 Q. And it has a fraud carve-out. What does
 4 that mean?
 5 A. Just the bad boy carve-outs, the borrower
 6 isn't going to -- there is a whole list of
 7 them. He isn't going to misappropriate
 8 funds; you know, he is not going to do --
 9 Q. Okay.
 10 A. -- all the stuff that would make him a bad
 11 boy.
 12 Q. And the "yes" says that he has agreed
 13 to --
 14 A. He will sign the nonrecourse carve-outs.
 15 Q. And these are all requirements at the time
 16 of the funding of the loan?
 17 MR. POPEO: Objection.
 18 Q. Am I right?
 19 A. Not requirements. It is just information.
 20 Q. Information that is that the borrower has
 21 agreed to sign such a carve-out at the
 22 time of the borrowing?
 23 A. It could be. Sometimes the commitment
 24 isn't fully negotiated when you get the

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1 approval.
 2 Q. I see.
 3 A. I don't know about this case.
 4 Q. On page 1134 in the August 6th version and
 5 411 in the other version, you have --
 6 there are "Lines of business allocations
 7 voted" section?
 8 A. Yes.
 9 Q. What does that mean?
 10 A. That is who is going to get a piece of the
 11 loan.
 12 Q. Does that --
 13 A. I don't have anything to do with it, but I
 14 know that is what it is.
 15 Q. Okay. That is at the time the loan is
 16 funded, that is how the allocations were
 17 going to be made?
 18 MR. POPEO: Objection.
 19 A. I'm not sure. I think the -- I don't
 20 know.
 21 Q. What does it mean when it refers to a
 22 voted section?
 23 A. Well, this is our old form. We don't use
 24 this anymore. But that is what was voted.

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1 Some of the stuff is information purposes
 2 only for the committee when we used to
 3 have a committee to make a decision, and
 4 the voted section is what they actually
 5 voted on. The other stuff is just
 6 information.
 7 Q. I see. On page 1134, it says that the
 8 approval date was August 10, and then on
 9 JH 411 in Coyne 3, it says the approval
 10 date was August 16, and it is your
 11 testimony that the approval date was
 12 August 16?
 13 A. The final approval, yes.
 14 MR. SCHER: All right. Another
 15 two minutes, and I think I am done.
 16 (Pause.)
 17 Q. My question is this. In this case,
 18 Mr. Malik is the investment officer. He
 19 has negotiated the loan application to the
 20 point of submitting it for approval. Do I
 21 have that right?
 22 A. Submitting the loan app?
 23 Q. Yes. He has negotiated a loan application
 24 with the borrower; right?

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1 A. He did. Yes.
 2 Q. And then he takes information and prepares
 3 an approval document?
 4 A. Yes.
 5 Q. Is that right?
 6 A. Yes.
 7 Q. What are the bounds within which he is
 8 required to operate in submitting the
 9 approval document? In other words, is he
 10 bound to what is contained in the loan
 11 application or not?
 12 MR. POPEO: Objection.
 13 A. I'm not sure I understand the question.
 14 Q. To the extent that there is information in
 15 the approval document which differs from
 16 the information contained in the loan
 17 application, what are the bounds within
 18 which the investment officer is required
 19 to operate?
 20 MR. POPEO: Objection.
 21 A. Typically the loan commitment -- the
 22 commitment is negotiated before you seek
 23 approval.
 24 Q. Right.

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1 A. I don't know what the case was here.
 2 Q. Okay. That seems to have been the case
 3 here.
 4 A. Okay. So.
 5 Q. He has to take the information contained
 6 in the loan application, extract it from
 7 the loan application, and use it in
 8 connection with the loan approval
 9 document, doesn't he?
 10 MR. POPEO: I object to the
 11 form.
 12 A. No. They're mutually exclusive.
 13 Q. Well, they are not mutually exclusive,
 14 but.
 15 A. Well --
 16 Q. So what are the bounds within which the
 17 investment officer has to operate in
 18 connection with the preparation of the
 19 approval document?
 20 MR. POPEO: Objection.
 21 A. I don't know that there are any. I mean
 22 you create an approval document with the
 23 loan amount that you want and the evidence
 24 to support, and you show the risks

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1 associated with making that loan for
 2 32 million. I don't see how it ties with
 3 the commitment.
 4 Q. So it's your testimony that the
 5 information contained in the approval
 6 document is unrelated to the information
 7 contained in the loan application except
 8 perhaps with respect to the description of
 9 the property and the borrowers?
 10 MR. POPEO: Objection.
 11 A. That's not my testimony.
 12 Q. There are numbers contained in the loan
 13 application that are not contained in the
 14 approval document that are changed in the
 15 approval document. What limits the loan
 16 -- the investment officer from just willy-
 17 nilly making up numbers that are contained
 18 in the approval document?
 19 MR. POPEO: Objection.
 20 A. I can't answer that.
 21 Q. Aren't there bounds within which he has to
 22 operate?
 23 A. Well, I think we have a fiduciary
 24 responsibility to report the truth and

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1 accuracy. So I can't see how anyone would
 2 continue with their job if they made up
 3 stuff.
 4 Q. Okay. The investment officer in preparing
 5 the approval document can't make up stuff?
 6 He has to use the stuff that the borrower
 7 gave him; right?
 8 MR. POPEO: Objection.
 9 A. No. That's not --
 10 Q. That's not true?
 11 A. No. I'm not saying it is not true, but
 12 you get information from all kinds of
 13 places, not just the borrower.
 14 Q. Well, if the borrower --
 15 A. The borrower doesn't give you the market
 16 information. You get the market
 17 information from your sources.
 18 Q. Let's just say the borrower says, "I
 19 intend to charge a management fee of X
 20 dollars." Let's say it is 5 percent of
 21 the rental rate -- of the rents at this
 22 particular property. Does the investment
 23 officer have to use that management rate
 24 in seeking approval or can he just change

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1 it to a lower number so that the numbers
2 work?
3 MR. POPEO: Objection.
4 A. You can use -- if you -- I mean the way
5 you look at it, it is a level of risk. So
6 if he wants to charge a particular
7 borrower, any borrower wants to charge
8 5 percent or 6 percent, because it is self
9 managed, you can underwrite 4, because you
10 think if you ever took this property back
11 you could get a property management
12 company in there for 4 percent. So the
13 borrower provides an estimate of numbers,
14 but we have to get comfortable with them,
15 and we may adjust them up and down to look
16 at like properties in the same area to see
17 where expenses are and see if they are in
18 line with other expenses.
19 Q. So --
20 A. So it is a management tool for us to
21 assess a level of risk.
22 Q. So the investment officer is permitted to
23 make modifications to the numbers
24 submitted by the borrower but only if

1 testimony. She has testified to her
2 knowledge about what the process is. If
3 you have got a particular question, you
4 should ask it. Otherwise, I think we have
5 plowed this ground.
6 BY MR. SCHER:
7 Q. Answer my question.
8 MR. POPEO: The same objection.
9 You can answer, if you can.
10 A. Which one? There were a few of them.
11 Q. The marketplace reality is the boundary in
12 which the investment officer must operate;
13 am I right or wrong?
14 MR. POPEO: Objection.
15 A. I don't understand your definition of
16 "reality."
17 Q. You said the investment officer is
18 permitted to make modifications to the
19 numbers submitted by the borrower but only
20 if those numbers are grounded in some
21 reality; right?
22 MR. POPEO: Objection.
23 A. I don't know if I said that.
24 Q. Well, what are they grounded in?

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1 those numbers are grounded in reality?
2 MR. POPEO: Objection.
3 A. I can't speak for other investment
4 officers.
5 Q. Well, that is what your fiduciary
6 obligation would dictate; right?
7 MR. POPEO: Objection.
8 A. I'm not sure.
9 Q. Well, you mean they could imagine numbers?
10 MR. POPEO: Objection.
11 Q. Really they have to be grounded in
12 reality, don't they?
13 A. I don't know what reality you're speaking
14 about, I mean.
15 Q. The reality of the marketplace, you said.
16 You said that there might be situations
17 where the investment officer could modify
18 the reality presented by the borrower and
19 use his own knowledge or knowledge he
20 obtains regarding what the management
21 charge would be for a property like this
22 in a community like this?
23 MR. POPEO: I object to the form
24 of the question. That was not in fact her

1 MR. POPEO: I object to the
2 form. I think we are getting tangled in
3 some esoteric discussion about realities.
4 Why don't you ask her what the policies or
5 practices are or why don't you ask her
6 what happened in the particular case?
7 BY MR. SCHER:
8 Q. What are the policies and practices within
9 which are the bounds that an investment
10 officer can operate in modifying the
11 information provided by the borrower?
12 A. Well, I gave you an example of a
13 management fee. Sometimes the borrower
14 provides an 8 percent management fee, and
15 we know if we took this property back, we
16 could get somebody in there for 4, so we
17 can underwrite 4. I don't think there are
18 bounds and -- I mean that is an example of
19 what we -- of how we modify. And, you
20 know, when we modify, it is to get to the
21 loan amount that the borrower wants.
22 Q. Of course, if the borrower is saying, "I
23 am going to charge 8 percent management
24 fee and will you loan me \$32 million if I

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1 do that," and then the investment officer
2 says, "Well, I know if I took back this
3 property, I could manage it for 4
4 percent," you're not going to loan him
5 \$32 million; are you?

6 MR. POPEO: Objection.

7 A. What does that have to do with an 8 or a
8 4 percent?

9 Q. It doesn't have any effect?

10 A. No. I don't understand the question that
11 I think you have in there.

12 Q. No. My question is if the net operating
13 income as a result of the deduction of
14 these expenses brings the net operating
15 income way down from what you underwrote
16 the loan to be, wouldn't that influence
17 the size of the loan that you would be
18 willing to make?

19 MR. POPEO: Objection.

20 A. Again these are assessment risks that we
21 use. So if he wants to underwrite 8, we
22 would underwrite 4. Chances are we're not
23 going to underwrite 8, because 8 is an
24 unrealistic number. So we would

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1 Q. Okay. Is it your testimony that the
2 approval -- the approval of the loan --
3 well, my question -- you are saying that
4 the investment officer's preparation of
5 the approval document with numbers that
6 are not in the application is irrelevant
7 to the application and commitment process?

8 MR. POPEO: Objection.

9 Q. Is that right?

10 A. I don't -- I don't know what you just
11 said --

12 Q. Okay.

13 A. -- I mean.

14 Q. So let me say it again. Does the
15 investment officer have to use the
16 information provided by the prospective
17 borrower in the loan application in
18 preparing the approval document?

19 MR. POPEO: Objection. Asked
20 and answered.

21 You can answer it again.

22 A. I don't really know how to answer it. I
23 mean the application slash commitment is
24 different from our internal underwriting.

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1 underwrite 4. So --

2 Q. So you underwrite 4. That means you
3 approve the funding of the \$32 million
4 loan?

5 A. I don't know what we used in this case.
6 What did we use?

7 Q. Well, you used --

8 A. When I thought you were tying it back to
9 the 32 million, I thought you were tying
10 it back to this loan.

11 Q. No. We could bother going through and
12 seeing what the difference is. It is
13 about double, but. It is about half the
14 amount that the borrower projected.

15 But putting that aside, is it
16 your testimony that you would loan
17 \$32 million even if the borrower charged a
18 management rate well above the
19 underwriting management rate?

20 MR. POPEO: Objection.

21 If you can answer it in that
22 form --

23 A. I don't think I can answer it. If you
24 want to rephrase it so I can answer it --

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1 So I don't know what you're asking.

2 Q. Well, we have gone down this path, and I
3 will take you down it again. There is
4 information contained in the approval
5 document which is contained in the loan
6 application; right?

7 A. In this case?

8 Q. Yes.

9 A. I don't know. I would have to compare the
10 two of them.

11 Q. Generally speaking?

12 A. Generally? Usually what is in the
13 commitment is the loan amount. So that
14 would be in the approval document.

15 Q. Right.

16 A. So yes. I guess you could say there is
17 some information the same in both.

18 Q. The required ratios are contained in the
19 loan application and contained in the
20 approval document?

21 MR. POPEO: Objection.

22 A. Sometimes, yes.

23 Q. In this case, they were?

24 A. Okay.

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1 Q. Could the investment officer under your
2 description change the loan-to-value ratio
3 contained in the application commitment
4 from what appears in the application
5 commitment to a different ratio in the
6 approval document?

7 MR. POPEO: I object to the
8 form. When you are saying "application
9 commitment" --

10 MR. SCHER: That's the way the
11 witness described it.

12 MR. POPEO: Well, actually,
13 respectfully, no, but you can answer it.

14 THE WITNESS: The application
15 becomes the commitment.

16 MR. SCHER: That's okay.

17 THE WITNESS: If it is in the
18 application stage, it is still being
19 negotiated.

20 BY MR. SCHER:

21 Q. Here we have a situation where there is a
22 75 percent loan-to-value ratio contained
23 in the loan application, and in the
24 approval document, there is a different

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1 A. Does it have 50 percent in this case?

2 Q. No. But if it were changed.

3 A. Well, you are typically not going to
4 approve a 50 percent loan to value if you
5 are going to give the borrower 75 percent.
6 They should be similar.

7 Q. Why?

8 A. Because you have said that you are going
9 to commit this particular loan. Because
10 you -- you can't -- you are not going to
11 have -- I am not going to say you never
12 can, because typically you approve what
13 you have told the borrower we are going to
14 give you. If we are going to give
15 somebody 50 million and that ends up being
16 a 75 percent LTV, that is what you are
17 going to have in your approval. I don't
18 see how you are going to make it
19 50 percent. I can't see a case where that
20 would happen. I'm not saying it hasn't,
21 but I -- I haven't seen that.

22 Q. So the loan -- the L in the LTV is the
23 loan amount? 32 million; right?

24 A. That's the loan amount. Yes.

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1 ratio. Is that permitted under your
2 description?

3 A. Did you say it was 75 percent?

4 Q. Yes.

5 A. Well, it would have to be 75 or less in
6 the approval document.

7 Q. Okay. So that is a boundary of what the
8 investment officer can do; right? He
9 can't increase the loan-to-value ratio?

10 A. 75 percent is Hancock's maximum level of
11 lending. So if it is 75 percent, we can
12 lend 75 percent.

13 Q. Now if the loan-to-value ratio in the
14 approval document were 50 percent, --

15 A. Um-hmm.

16 Q. -- would that necessitate informing the
17 prospective borrower of the change?

18 MR. POPEO: Objection.

19 A. Commitment. Whatever is in the
20 commitment. If the commitment says
21 75 percent, that's what he gets.

22 Q. That's what he gets. So the fact that the
23 approval process has a loan-to-value ratio
24 of 50 percent is irrelevant?

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1 Q. And the value is the -- is what? Is the
2 appraised value?

3 A. It is our internal value.

4 Q. So the 75 percent of the loan amount to
5 your internal value is what is in the
6 application?

7 A. No. The -- the loan amount of 32 million,
8 we must have valued it greater than that,
9 25 percent greater than that. I don't
10 have my calculator, but.

11 Q. In order to achieve the 32 million?

12 A. In order to get to the 32 million.

13 Q. Okay. You are saying that the approval of
14 that loan could not be with a
15 loan-to-value ratio that was significantly
16 lower than 75?

17 A. I didn't say --

18 MR. POPEO: Objection.

19 A. -- it couldn't be.

20 MR. POPEO: Objection.

21 You can answer.

22 A. I didn't say it couldn't be. I said
23 typically they mirror each other or pretty
24 close to it.

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1 Q. Why is that?

2 A. Because that's -- that's what it is. I

3 mean you are not -- if in your loan

4 commitment if you have a 50 percent LTV at

5 32 million, you would say, "We'll give you

6 32 million." Your debt service coverage

7 has to be -- it is probably 2.0 at that

8 point, and your loan to value is going to

9 be 50 percent. So why would you approve

10 it differently?

11 Q. I don't know why.

12 A. Yes. It doesn't make any sense. That's

13 what I'm saying. I don't -- I don't

14 understand, because you wouldn't do that.

15 Q. Why wouldn't you do that?

16 MR. POPEO: Objection.

17 A. I don't know how else I can answer it.

18 Q. I still don't understand, so let me try it

19 again.

20 A. Does it have it?

21 Q. The loan-to-value ratio and the debt

22 service coverage ratios are both -- are

23 contained in the loan application and

24 contained in the approval document, the

1 A. Because that is our self-imposed

2 underwriting guideline.

3 Q. Which is? The 10 percent constant?

4 A. The 10 percent. Yes.

5 Q. But the 75 percent loan-to-value and the

6 debt service coverage ratios are not

7 internal controls?

8 A. They are -- they are what you are willing

9 to lend on. You are willing to lend on

10 something based on this coverage and that

11 coverage. How we get comfortable with a

12 10, a 9, or an 8, that is Hancock's own

13 internal decision to do what they want.

14 Q. Could you explain to me the difference

15 between the loan-to-value and debt service

16 coverage ratio as something with which

17 Hancock has to be comfortable and the

18 10 percent constant as something with

19 which Hancock has to be comfortable?

20 MR. POPEO: Objection.

21 You can answer.

22 A. The 75 percent is just -- for this

23 particular loan, we're willing to lend up

24 to 75 percent of the value. And typically

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1 same numbers are there.

2 A. Okay. That makes sense.

3 MR. POPEO: Wait. There is a

4 question coming, I predict.

5 THE WITNESS: Sorry.

6 Q. The 10 percent breakeven is contained in

7 the approval document but not contained in

8 the application.

9 MR. POPEO: Hold on.

10 THE WITNESS: I am.

11 Q. So why is that?

12 MR. POPEO: I object.

13 You can answer the question.

14 A. Ten percent constant is our underwriting

15 level, assessment of risk. It is not

16 supposed to be in the commitment.

17 Q. Why is the loan-to-value and the debt

18 service coverage ratios not underwriting

19 risks?

20 MR. POPEO: Objection.

21 A. I didn't say they weren't.

22 Q. But why are they contained in the

23 application and the 10 percent constant is

24 not?

1 with the LTV goes a certain debt coverage

2 ratio. That is all that is.

3 Then the 10 percent is just

4 another little internal test. If it meets

5 this, it gets somebody a little more

6 comfortable. That is all it is. And if

7 it doesn't meet it and we still like the

8 loan, the 10 percent constant goes out the

9 window.

10 Q. Well, I am still not sure I understand the

11 difference, but what I do understand is

12 that if the loan-to-value ratio and debt

13 service coverage ratios were not met by

14 the borrower, John Hancock might borrow

15 the money anyway; right?

16 MR. POPEO: Objection.

17 Q. Might lend the money anyway; right?

18 A. I have no idea what we would do.

19 Q. No?

20 A. I have no idea. I'm not going to say no,

21 because I don't know.

22 Q. And you don't have any idea whether John

23 Hancock would lend the money whether the

24 borrower met the 10 percent breakeven or

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1 not?

2 MR. POPEO: Objection.

3 Q. The same thing; right?

4 MR. POPEO: The same objection.

5 A. I don't know.

6 Q. You don't know one way or the other?

7 A. No.

8 Q. So what is the difference between the

9 loan-to-value debt service coverage ratio

10 on the one hand and the 10 percent

11 constant ratio on the other hand as it

12 applies to the borrower?

13 MR. POPEO: Objection.

14 Q. They are both required to make John

15 Hancock comfortable; right? Aren't they?

16 A. No. The borrower doesn't have to know

17 about our 10 percent. That is us only.

18 That has nothing to do with the borrower.

19 The borrower is only concerned with how

20 much money are you going to give me and if

21 I hit my 75 percent LTV.

22 Q. If the borrower knew that you had a

23 10 percent constant requirement that would

24 affect the size of the loan, doesn't that

1 Q. All right.

2 MR. SCHER: Another 30 seconds.

3 (Pause.)

4 MR. SCHER: It sounds like it is

5 a wrap.

6 THE WITNESS: Okay.

7 (Whereupon, at 11:52 a.m., the

8 deposition was adjourned.)

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1 matter to the borrower?

2 MR. POPEO: Objection.

3 A. I don't know what matters to the borrower.

4 Q. Okay. You know that the size of the loan

5 matters to the borrower, or you don't know

6 that?

7 A. I would imagine that is what the borrower

8 wants, how much money I can get.

9 Q. And if the 10 percent constant would

10 result in the borrower not achieving

11 \$32 million in loan proceeds, that would

12 be material to the borrower, wouldn't it?

13 MR. POPEO: Objection. Lacks

14 foundation; mischaracterizes the prior

15 testimony.

16 You can answer the question.

17 A. I don't know what matters to the borrower.

18 Q. Okay. You don't know whether borrowing

19 sufficient money to pay off the

20 construction loan matters to the borrower?

21 MR. POPEO: Objection.

22 A. I didn't know it had a construction loan.

23 I wasn't involved in the negotiation of

24 this transaction.

DEPONENT'S ERRATA SHEET

AND SIGNATURE INSTRUCTIONS

The original of the Errata Sheet has been delivered to Paul D. Popeo, Esq.

When the Errata Sheet has been completed by the deponent and signed, a copy thereof should be delivered to each party of record and the ORIGINAL delivered to Howard D. Scher, Esq., to whom the original deposition transcript was delivered.

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2
3 CASE: JOHN HANCOCK INSURANCE COMPANY VS.
VESTMONT LIMITED PARTNERSHIP ET ALS

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hereby subscribe to the transcript as an
22 accurate record of the statements made by
me.

23 PATRICIA COYNE

Page 130

1 CERTIFICATE

2 Commonwealth of Massachusetts

3 Plymouth, ss.

4
5 I, Judith McGovern Williams, a
6 Registered Professional Reporter and
7 Notary Public in and for the Commonwealth
8 of Massachusetts, do hereby certify:

9 That PATRICIA COYNE, the witness
10 whose deposition is hereinbefore set
11 forth, was duly sworn by me and that such
12 deposition is a true record of the
13 testimony given by the said witness.

14 IN WITNESS WHEREOF, I have
15 hereunto set my hand this day of
16 , 2006.

17
18
19 Judith McGovern Williams
20 Registered Professional Reporter
Certified Realtime Reporter
21 Certified LiveNote Reporter
Certified Shorthand Reporter No. 130993

22 My Commission expires:

23 April 2, 2010
24

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1

1 ***** ROUGH DRAFT *****

2 This is a rough draft transcript, unproofed
3 and uncertified. It may contain translation, spelling and
4 punctuation errors. This rough draft is not to be
5 circulated beyond the recipient or quoted from in any
6 proceeding.

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10 PREPARED BY:

11 Karin Jenkner, C.R.R., R.P.R., C.S.R.

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2

1 FRIDAY, MARCH 31, 2006

2 ---Upon commencing at 9:06 a.m.

3 IVOR THOMAS, sworn

4 EXAMINATION

5 BY MR. SCHER:

6 1 Q. Good morning, Mr. Thomas. Let me
7 formally introduce myself. My name is Howard Scher. I
8 represent the defendants in this lawsuit, which has been
9 brought by John Hancock Life Insurance Company, including
10 vesterra corporation. I'll refer to the defendants
11 collectively as Vesterra. Is that acceptable to you?

12 A. Mm-hm.

13 2 Q. And you understand that I am the
14 attorney for the defendants in this case?

15 A. Yes, I do.

16 3 Q. And you are here and you're represented
17 by John Hancock's counsel, Mr. Davis; am I right about that?

18 A. That's correct.

19 MR. DAVIS: Sorry to interrupt, but I take it
20 since we're in Toronto, we should probably make it clear.
21 We're proceeding under the United States Federal Rules of
22 Civil Procedure; correct?

23 MR. SCHER: Correct.

24 4 Q. And that's acceptable to you,
25 Mr. Thomas?

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3

1 A. Yes, it is.

2 5 Q. Could you identify yourself for the
3 record, please?

4 A. My name is Ivor Thomas. What else would
5 you like to know?

6 6 Q. Well, what is your position?

7 A. My position with Manulife is senior
8 vice-president, North American mortgage operations.

9 7 Q. What are your duties and
10 responsibilities as they relate to the John Hancock
11 operation in Boston?

12 A. My responsibilities are to ensure we
13 have the proper origination loan origination people in
14 place, that we have the proper policies in place. I'm
15 responsible for all the credit functions within the approved
16 guidelines as given out by the various boards of Manulife
17 and Hancock. I'm responsible for the overall credit quality
18 of the mortgage portfolio in the U.S. and the same applies
19 in Canada.

20 8 Q. Prior to the -- well, at the time that
21 Manulife acquired John Hancock, and I believe that was April
22 28th of 2004, do I have that right?

23 A. I believe so.

24 9 Q. Did you replace someone at John Hancock?

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25 A. I replaced Mark Davis.

*** ROUGH DRAFT ***
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4

1 10 Q. And were there any other personnel
2 changes at John Hancock in Boston as a result of the
3 acquisition, in the mortgage area as a result of the
4 acquisition by Manulife?

5 A. Well, I'd like to point out that Mark
6 Davis left of his own accord, so it wasn't a personnel
7 change instituted by Manulife. No, as far as, to my
8 knowledge, no, not at that time, no.

9 11 Q. In the year following the acquisition,
10 so that would be from April 28th, 2004, to April 2005, were
11 there other personnel changes as a result of the acquisition
12 by Manulife within your department?

13 A. Within the department, there were some
14 people that left.

15 12 Q. But not at the instance of Manulife?

16 A. Not at the instance of Manulife. April
17 2005... I'm trying to remember when that was.

18 13 Q. There's a Mr. Henderson.

19 A. Yeah, there's David Henderson. I'm just
20 trying to get the dates straight in my mind.

21 14 Q. Okay.

22 A. But April 2005. David Henderson was
23 one.

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24 15 Q. I know that David Henderson left the
25 company, I've taken his deposition, and he left the company,

*** ROUGH DRAFT ***
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5

1 I believe, in early 2005, perhaps the first quarter of 2005?

2 A. Yeah, I think it was probably March.

3 March, April, in that range. Yeah.

4 16 Q. Can you tell me the circumstances of his
5 leaving the company?

6 A. The circumstances leaving. What we were
7 doing was trying to reduce the -- how do I put this
8 politely, the body count. We'd gone through. We'd decided
9 there were too many people on staff, and then we identified
10 the various people we thought would be best to leave.

11 17 Q. Okay.

12 A. It was a re-engineering, put it that
13 way.

14 18 Q. And in connection with the
15 re-engineering, Mr. Henderson was asked to leave; is that
16 right?

17 A. That's correct.

18 19 Q. Were there others within the area of
19 your responsibility at John Hancock in Boston who were asked
20 to leave?

21 A. Jeez.

22 MR. DAVIS: Objection. Howard, I don't

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23 understand how -- whether other people within 2 organization
24 were asked to leave has any relevance whatsoever in this
25 case.

*** ROUGH DRAFT ***
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6

1 MR. SCHER: Okay, well, just bear with me
2 just for a minute.

3 20 Q. Mr. Nectow left the organization as well
4 in around this time; is that right?

5 A. No, he left in July of 2005, of his own
6 accord.

7 21 Q. Okay. Were there others within the area
8 of the mortgage lending at John Hancock in Boston who were
9 asked to leave as Mr. Henderson was?

10 A. I'm trying to think. In Boston. Can't
11 recall. Put it that way. Yes, there was one other. Jun
12 J-u-n, Han, H-a-n.

13 22 Q. And that is the -- the responsibilities
14 that person held?

15 A. He was not involved on the lending side
16 of the operation.

17 23 Q. Okay.

18 A. He was in market research. That sort of
19 thing.

20 24 Q. Fine. In connection with your oversight
21 of the mortgage lending function at John Hancock in Boston,

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22 can you tell me about how much time you allocate to that
23 responsibility, beginning in the end of April 2004?

24 A. Okay. There are several time periods
25 involved. But in April 2004 I was full-time.

*** ROUGH DRAFT ***
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7

1 25 Q. Okay. And then when did that full-time
2 condition end?

3 A. The full-time condition ended in,
4 essentially, November of 2004.

5 26 Q. Okay. And since then what's the level
6 of your involvement in the operation of the John Hancock
7 mortgage lending function in Boston?

8 A. I'm still involved in it a hundred
9 percent of the time, but actually, physically, I'm only
10 there 50 percent of the time. I'm a week there and a week
11 in Toronto, but I'm still a hundred percent involved in
12 things that go on.

13 27 Q. In connection with your full-time
14 involvement until November of 2004 -- strike that.

15 was there something that occurred in 2004
16 that caused you to reduce your physical presence there?

17 A. The Canadian vice president, a gentleman
18 by the name of Lorne Down, passed away in October of 2004,
19 and so his job was given to me. So my new responsibilities
20 at that time were to manage the U.S. portfolio, manage the

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21 Canadian portfolio.

22 28 Q. So --

23 A. In addition, the Canadian portfolio is
24 split between Toronto and there's another portfolio in
25 Halifax.

*** ROUGH DRAFT ***
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8

1 29 Q. And your responsibility was -- as of
2 November of 2004, became all of North America?

3 A. That's correct.

4 30 Q. Do I have that right. Prior to November
5 of 2004, so let's take it from April 28th, 2004, to November
6 2004, what was your title?

7 A. Senior vice-president, U.S. mortgages.

8 31 Q. Okay. In connection with your
9 responsibilities as the senior vice-president U.S.
10 mortgages, were there changes you implemented in addition to
11 personnel changes from the time you began your position
12 there?

13 A. Since that time there have been several
14 changes. Change number 1 would have been the institution of
15 the Manulife credit policy, and subsequent to that we've
16 introduced new mortgage systems from what were previously in
17 place.

18 32 Q. Could you tell me what a mortgage system
19 is?

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20 A. That's a system whereby you collect all
21 the payments of principal and interest. It's the accounting
22 system. It's the servicing system, how you keep track of
23 all your loans.

24 33 Q. When you say "system" is that a software
25 system?

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9

1 A. It's a software system.

2 34 Q. So you have introduced the Manulife
3 software system which monitors the collection of mortgage
4 loans in the John Hancock operation?

5 A. Well, what actually happened, there
6 were, at the time of the merger, there were three systems in
7 place. There was one in place by Maritime Life, which is
8 known as Plexus, there was one in place by Manulife, known
9 as Comet, and John Hancock was using a system known as
10 Strategy put out by McCracken.

11 Since the merger, and finally by March 1 of
12 this year, we put all those three systems on to one external
13 system run by Midland Loan Services.

14 35 Q. Okay.

15 A. Known as Enterprise.

16 36 Q. So as of March of '06, you now have one
17 mortgage system?

18 A. Right.

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19 37 Q. From the time of acquisition until March
20 of '06 you were moving toward the integration and creating
21 of a uniform mortgage collection system?

22 A. That's correct. The Hancock portfolio
23 was integrated October, I think it was October 31st of 2005.
24 I could be wrong by a month, but October 31st.

25 38 Q. The third change that you identified was

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10

1 the institution of a Manulife policy -- credit policy. And
2 could you tell me what that is?

3 A. How do I put this in a few words? It's
4 a policy that has been drafted and it's basically
5 guidelines. It has received board approval and the
6 understanding is that the lending group, in this particular
7 case mortgages, follows those -- follows the parameters of
8 that policy.

9 39 Q. And I've seen a rather thick binder that
10 has a heading: "Manulife credit policy," and is that where
11 the Manulife credit policy is contained?

12 MR. DAVIS: Objection. You may respond.

13 MR. SCHER: Yeah, I'm just dropping something
14 vaguely.

15 THE DEPONENT: Well, I'm not sure what book
16 you looked at.

17 BY MR. SCHER:

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18 40 Q. Right.

19 A. But there is a book, maybe you saw one
20 that had "policy" written on it. The policy part of it's
21 only about that thick and the procedures part is that thick
22 (indicating).

23 41 Q. Right.

24 A. So the procedures part interprets what
25 the policy says.

*** ROUGH DRAFT ***
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11

1 42 Q. Now, in connection with the Manulife
2 credit policy, was there introduced a loan-sizing criteria
3 that we've referred to as the 10% constant?

4 A. It's referred to, I think, in the U.S.
5 as a 10% constant but it's really referred to in the policy
6 as a 10 percent break-even rate.

7 43 Q. Okay.

8 A. And the concept is really not much
9 different than what was in place in the Hancock policy.
10 They called it a constant and it was used in a slightly
11 different position in the guidelines and in the Manulife
12 policy.

13 44 Q. Could you articulate what that
14 difference was?

15 A. Well, the Hancock, basically, looked at
16 a constant sort of aimed towards the end of the loan in

06mr31-ROUGH DRAFT Thomas.txt

17 terms of renewal and whether it would carry that or not.
18 The Manulife point of view was basically concerned with
19 rising interest rates, in terms of when you do a lean, one
20 of your main concerns is, somewhere down the road interest
21 rates may rise significantly, to the point where you may not
22 be able to refinance the loan externally and you wouldn't
23 get repaid.

24 So it was instituted, basically, as a check
25 on how much room you had between today's rates and any

*** ROUGH DRAFT ***
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12

1 potential rate and what kind of risk that gave you.

2 45 Q. So the John Hancock view with respect to
3 the 10% break-even or constant, and I take it that those are
4 interchangeable words; is that right?

5 A. I don't think so.

6 46 Q. Okay.

7 A. Well, I don't think they're
8 interchangeable because for umpteen years now, 20-some
9 years, I've been using break even.

10 47 Q. And you're not about to use "constant."

11 A. And I'm not about to use "constant."

12 Yeah.

13 48 Q. All right. Well --

14 A. And I think that the constant comes in
15 in a slightly different form of calculation.

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16 There's different ways of telling whether a
17 loan can maintain its payment stream and cover the amounts
18 owed. Cover the amounts by the principal and interest
19 payments. It's a slightly different concept. It's kind of
20 hard to explain what the difference in the concept is.

21 49 Q. That's the concept between referring to
22 it as a "constant" or referring to it as a "break-even"?

23 A. Correct. As I've said, I've always been
24 used to break-even interest rate, and it's used for a
25 particular purpose, to guess or estimate what your risk is

*** ROUGH DRAFT ***
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13

1 if interest rates move up.

2 50 Q. Okay.

3 A. It's slightly different than what is
4 used or it was used by Hancock or others who kind of use it
5 to say... jeez, how to explain this? You throw the number
6 in to see what the loan will carry or what the payments will
7 be.

8 51 Q. So you said in your testimony that there
9 are several tests regarding the ability of a borrower to
10 carry a loan.

11 A. Mm-hm.

12 52 Q. And that they include the Loan to Value,
13 do I have that right?

14 A. Correct.

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15 53 Q. The Debt Service Coverage Ratio?

16 A. Correct.

17 54 Q. And this constant or break-even policy;
18 is that right?

19 A. Right.

20 55 Q. And all three are designed for what
21 purpose?

22 A. Well, the primary purpose is to rate the
23 loan. Under our policy, we're not allowed to do any loans
24 that are rated less than, and this is going to be a
25 difference in terminology between Canada and the U.S., but

*** ROUGH DRAFT ***
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14

1 the Manulife rating would be a triple B is your minimum. So
2 the policy would say you have to have a minimum Debt Service
3 Ratio. You have to have a minimum Loan to Value or maximum
4 Loan to Value. You got the break-even issue. And then
5 you've got a quality issue.

6 And all of those wrap together to tell you
7 what your rating should be.

8 56 Q. Okay. And as I understand it, it's your
9 testimony that in order for there to be the approval of a
10 loan, the borrower has to satisfy those four criteria:
11 Quality, plus the three ratios, Loan to value, Debt Service
12 Coverage, and break-even or constant; is that right?

13 A. Well, the transaction has to satisfy

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14 those.

15 57 Q. okay.

16 A. Has to satisfy a minimum credit rating
17 of triple B.

18 58 Q. And the way you arrive at a credit
19 rating of triple B is by appraising those four criteria?

20 A. Right.

21 59 Q. Quality, Loan to Value, Debt Service
22 Coverage, and constant or break-even; is that right?

23 MR. DAVIS: Objection. You may respond.

24 THE DEPONENT: Correct.

25 BY MR. SCHER:

*** ROUGH DRAFT ***
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15

1 60 Q. Now, you said that the triple B rating
2 was the Manulife system, and I take it from that that there
3 is a parallel system that John Hancock used and uses to rate
4 loans?

5 A. Since merger they're using the Manulife
6 system.

7 61 Q. Okay. So since merger, since April
8 28th, 2004, in order for a loan to be approved by John
9 Hancock, the loan would have to satisfy the four criteria
10 that you articulated, and the result of that -- is that
11 right?

12 A. That's right.

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13 62 Q. As far as I've gotten?

14 MR. DAVIS: Objection.

15 BY MR. SCHER:

16 63 Q. And the result of that evaluation of
17 those four criteria had to create a triple B rating?

18 A. Correct.

19 64 Q. And unless those four criteria were
20 satisfied and a triple B rating achieved, the loan would not
21 be approved. Am I right?

22 A. Correct.

23 65 Q. In the Manulife world, does Manulife use
24 a loan application form?

25 A. Yeah, the answer is to that yes, but

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1 it's not always.

2 66 Q. Okay. Can you tell me the circumstances
3 where a loan application form would not be used, just in
4 general terms?

5 A. In general terms, depends on the timing.

6 67 Q. If a loan needs to be done quickly, then
7 they might not use an application?

8 A. That's correct.

9 68 Q. But generally speaking there is a loan
10 application required by Manulife?

11 A. Well, I'm referring to in the Manulife

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12 days there were sort of a one or two page form that the
13 borrower would fill in. That's what I'm calling the
14 application.

15 69 Q. I see. I see?

16 A. Okay. And there's -- application gets
17 kind of confused, because there's a credit application which
18 is an internal document, and there's the external document.
19 And the Hancock system was always slightly
20 different.

21 70 Q. I see. And so the credit -- so the loan
22 application was a two-page document. Can you just give me
23 the gist of the information, the identification of the
24 property and the --

25 A. And the borrower's name, the major

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1 partners, identification of the property, the amount being
2 applied for. You know, general sorts of simple little
3 conditions like that. That often might be followed up by a
4 term sheet that went back outlining the terms and then...
5 And then you follow from that into the application format.
6 And after a credit application had been approved, then a
7 commitment letter was issued.

8 71 Q. So the credit application would be the
9 place where the prospective borrower would include financial
10 projection information and creditworthiness information, I

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11 take it?

12 A. Well, the credit application is where we
13 would take all the information provided by the borrower,
14 where all the financial statements he gave us, the rent
15 rolls, property descriptions, et cetera, et cetera, analyze
16 it and my opinion the numbers into a format that we
17 generally understand. And based on that rating and
18 describing what the transaction is, and then forwarding it,
19 we would get approval.

20 72 Q. I see. And in included in that credit
21 application, I take it, the quality of the borrowing would
22 be included?

23 A. Mm-hm.

24 MR. DAVIS: Objection.

25 BY MR. SCHER:

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1 73 Q. The borrower?

2 A. Borrower.

3 74 Q. Is that what the quality characteristic
4 ascertains?

5 MR. DAVIS: Objection. Pause for a moment,
6 sorry. I have an objection.

7 Objection. You may respond.

8 BY MR. SCHER:

9 75 Q. You refer to four criteria, the three

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10 numeric ratios or numeric qualities and -- ratios and then
11 the quality. what is the quality referred to?

12 A. Have you got an hour?

13 76 Q. Okay. The intangible subjective
14 factors?

15 A. I'll go back to the creating -- credit
16 rating system that we have -- had in place and still have in
17 place today.

18 Under various scenarios, there are minimum
19 Debt Service Ratios that are permitted. So the higher the
20 quality, in general, the higher the quality is, the higher
21 the rating of the quality, then the lower the Debt Service
22 Coverage Ratio that's allowed within a various rating --
23 whatever rating category you are using.

24 So the quality, if you look through the
25 manual you'll see there's a whole review which analyzes the

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1 quality, how's the economy doing in that particular
2 neighbourhood? what is the quality of the building, what
3 are the quality of the sponsors? -- I'm using quality too
4 many times but...

5 where the person underwriting the loan
6 transaction would justify his rating, whether this is
7 excellent, good, or fair or poor or whatever the case may
8 be. And based on that, that would allow you to use one debt

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9 service credit ratio over another.

10 For example, in one case where you had an
11 excellent, you might go to a Debt Service Coverage Ratio of
12 1.15.

13 77 Q. If it was poor you might go to?

14 A. You know, if you had the manual I'd show
15 you, but it would be a higher number.

16 78 Q. Okay.

17 A. So that's what I'm trying to explain.
18 That's how the quality came out. It looked at a variety of
19 different angles of the transaction from the general overall
20 economy to the economy of the state, the economy of the
21 state, location of the property, quality of the borrowers,
22 quality of the people managing the property. All these
23 sorts of aspects were wrapped into there to justify whether
24 it was excellent, poor, bad, or whatever. And then that
25 would then justify what Debt Service Ratio would be the

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1 limiting factor on the rating.

2 I know I've thoroughly confused you now.

3 79 Q. Not thoroughly.

4 MR. DAVIS: He started out confused, that's
5 okay.

6 BY MR. SCHER:

7 80 Q. And so when you arrived at John Hancock,

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8 did you find that their loan approval process differed from
9 that which Manulife had employed previously?

10 A. Their process differed. Yes, it
11 differed.

12 81 Q. Is it accurate to say that their loan
13 application included the credit application as well as the
14 fundamental loan application which Manulife had previously
15 used?

16 MR. DAVIS: Objection. Would you read back
17 the question, please.

18 BY MR. SCHER:

19 82 Q. Let me restate it. Did you find that
20 the loan application used by John Hancock included the
21 credit application information which you just described,
22 which Manulife had been using?

23 A. Okay. Let me try to explain it this
24 way.

25 The basic bare bones of the Hancock

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1 application were not that much different than the basic bare
2 bones of the Manulife application.

3 Generally all the same things, you considered
4 the same financial characteristics were reviewed and
5 considered, the rating system, which I've been -- was
6 referring to earlier, was basically the same. It included

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7 an aspect for quality in it as well that talked about Debt
8 Service Ratio, it talked about Loan to Value, it talked
9 about all those sorts of things. There really was not a
10 major difference.

11 The major difference in the overall credit
12 application process, and pardon me for rambling here, is the
13 start to finish was slightly different. In the Hancock
14 system, all the terms and conditions of a loan were
15 negotiated basically before the loan was approved. In the
16 Manulife system those kinds of things were negotiated after
17 the loan was approved.

18 And in the approval process at Hancock was a
19 presentation to a committee, whereas the Manulife process
20 was a walk-around. It went to one level, to another level,
21 to another level. It was not presented to a committee.

22 So in the Hancock system, a lot more work was
23 done by the Hancock folks up front, before the application,
24 credit application or the application for loan or the
25 borrower's request was even considered by a committee or by

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1 any approval authority.

2 But in terms of the rating system, it's very
3 close to the same.

4 83 Q. Okay.

5 A. And in terms of the items looked at and

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6 the issues considered, identical.

7 84 Q. So the end of the process for Manulife
8 and John Hancock were virtually the same, is that what
9 you're saying?

10 A. Yes.

11 MR. DAVIS: Objection.

12 BY MR. SCHER:

13 85 Q. But the --

14 MR. DAVIS: The end of the process?

15 MR. SCHER: Yes. Y.

16 86 Q. In other words, the end of the
17 processing of the loan application -- of the request to
18 borrow?

19 MR. DAVIS: Objection. You may respond.

20 THE DEPONENT: In terms of the loan being
21 approved?

22 BY MR. SCHER:

23 87 Q. Yes.

24 A. I would say yes. I would say a loan
25 processed the Hancock way and a loan processed the Manulife

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1 way at the end would be very similar.

2 88 Q. Right.

3 A. The only differences being in who wrote
4 it up and that sort of stuff, but it wouldn't be a major

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5 difference.

6 ---Brief Recess

7 BY MR. SCHER:

8 89 Q. Mr. Thomas, you've had an opportunity to
9 take a break. Did you confer with your attorney on the
10 subject matter of this deposition?

11 MR. DAVIS: The answer -- objection.

12 MR. SCHER: I'm just asking the question, yes
13 or no?

14 MR. DAVIS: Subject matter, no. Objection.

15 THE DEPONENT: No.

16 MR. DAVIS: You don't have to answer. That's
17 okay. I instruct him not to answer on what we talked about.

18 BY MR. SCHER:

19 90 Q. Did you confer with your attorney?

20 A. Yes.

21 91 Q. And was the subject of your conference,
22 your testimony here at this deposition --

23 MR. DAVIS: Objection. I instruct you not to
24 answer. He's not entitled to know what the subject matter
25 of our discussion was. R/F.

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1 BY MR. SCHER:

2 92 Q. In preparation for this deposition other
3 than the scheduling of the date and the place for your

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4 appearance here, have you done anything to prepare for this
5 deposition?

6 A. What do you mean? Done what?

7 93 Q. Have you met with your attorney?

8 A. Yes, met with the attorney.

9 94 Q. What was the duration of the meeting?

10 A. All told, two hours, maybe.

11 95 Q. Was that -- when was that?

12 A. Last week in Boston and this morning at
13 breakfast.

14 96 Q. And did you review documents in
15 connection with your preparation?

16 MR. DAVIS: You can answer that yes or no.

17 THE DEPONENT: Yes.

18 BY MR. SCHER:

19 97 Q. And what documents did you review?

20 MR. DAVIS: Objection. I instruct you not to
21 answer. R/F.

22 BY MR. SCHER:

23 98 Q. Were those documents selected by your
24 counsel?

25 MR. DAVIS: You can answer that.

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1 THE DEPONENT: Yes.

2 BY MR. SCHER:

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3 99 Q. I'd like to understand, if it is
4 possible, and of course that requires me to have mental
5 capacity, but I'd like to understand the 10% constant
6 requirement that John Hancock had. I've heard it referred
7 to as a loan-sizing criteria. Do you understand it to be a
8 loan-sizing criteria?

9 MR. DAVIS: Objection. You may respond.

10 THE DEPONENT: Can you clarify for me which
11 one you're referring to, the Hancock system or the Manulife
12 system?

13 BY MR. SCHER:

14 100 Q. Well, let's take the Hancock system,
15 which I believe refers to it as a 10% constant. Do you have
16 an understanding of what that is?

17 A. Vaguely.

18 101 Q. Can you tell me what your vague
19 understanding is, sir?

20 A. The 10% constant, as I think I tried to
21 explain earlier, relates to what the size of the loan will
22 be or at maturity.

23 102 Q. So when you say size at maturity, could
24 you tell me what that means? The amount left of the loan?

25 A. Unamortized.

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1 103 Q. Unamortized. But isn't the amount zero?

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2 A. No.

3 104 Q. Oh, okay. When is maturity?

4 A. Maturity alone could be anywhere from
5 zero to 40 years.

6 105 Q. Oh, okay. So and maturity is the last
7 date of the existence of the loan?

8 A. Correct.

9 106 Q. Okay. So the loan constant, the loan
10 constant is the size of the loan at the maturity of the loan
11 in the John Hancock system?

12 A. That's my understanding.

13 107 Q. And what is the 10% coverage criteria
14 that Manulife introduced to John Hancock?

15 MR. DAVIS: Objection. You may respond.

16 THE DEPONENT: Wasn't a coverage, it was a
17 break-even interest rate.

18 BY MR. SCHER:

19 108 Q. Sorry?

20 A. Calculation.

21 BY MR. SCHER:

22 109 Q. I'm sorry. What was the 10% break-even?

23 A. Do you want to know how it's calculated?
24 Is that what you mean.

25 110 Q. What's the difference between the 10

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1 percent constant and the 10% break-even?

2 MR. DAVIS: Objection. Asked and answered.
3 You can respond.

4 BY MR. SCHER:

5 111 Q. You've described to me what the 10%
6 constant is. Could you tell me what the 10% break-even is
7 in comparison with that?

8 A. The 10% break-even was used to actually
9 stress-test the loan to see what it would carry in terms of
10 maximum interest rates which would be in effect at maturity.
11 And it was used to assist you in determining what the credit
12 rating was.

13 112 Q. Okay. I used the phrase loan-sizing
14 criteria. Is it accurate to say that the 10% constant is a
15 loan-sizing criteria?

16 MR. DAVIS: Objection. You may respond.

17 THE DEPONENT: It could have an ect on the
18 size of the loan, sure.

19 BY MR. SCHER:

20 113 Q. Because if the -- it talks about the
21 size of the loan at maturity, and therefore it would dictate
22 what the size of the loan at maturity -- what the property
23 borrowing could bear with respect to loan size at maturity,
24 right?

25 A. Correct.

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1 114 Q. And does the 10% break-even have a
2 loan-sizing aspect to it?

3 A. It could have.

4 115 Q. So that if the stress, as you said,
5 would exceed the 10% level, then the amount of the loan
6 would need to be reduced; is that right?

7 MR. DAVIS: Objection.

8 THE DEPONENT: Not necessarily.

9 BY MR. SCHER:

10 116 Q. What else could be done?

11 A. In what regard?

12 117 Q. With respect to meeting the 10%
13 break-even?

14 A. You could reduce the requirement for the
15 10% break-even.

16 118 Q. Okay. So you could modify the 10%
17 break-even, but if you were to use the 10% break-even
18 criteria, that too would have an effect on the loan size; is
19 that right?

20 MR. DAVIS: Objection. You can respond.

21 THE DEPONENT: It would have an effect on it,
22 certainly.

23 BY MR. SCHER:

24 119 Q. So if I've understood you correctly, and
25 please correct me if I am wrong, both the 10% constant and

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1 the 10% break-even could have an effect on the loan size,
2 right?

3 A. Correct.

4 120 Q. But the 10% constant is more clearly
5 correlated to loan size than the 10% break-even; do I have
6 that right?

7 MR. DAVIS: Objection. You may respond.

8 THE DEPONENT: I think it involved -- in some
9 form or other, correlated to loan size. I mean, there's a
10 lot of factors that correlate to loan size. This is one of
11 several. Debt service coverage ratio, Loan to Value, market
12 trends, maturity of tenants, there's a variety of things
13 that could have an impact on that.

14 BY MR. SCHER:

15 121 Q. Okay. Can you explain to me why the
16 Manulife break-even criteria is called "break-even"?

17 A. It's called "break-even" because of the
18 way it's calculated. You take net operating income and
19 divide it by the loan amount, which basically only considers
20 the interest cost of the loan and not the amortization
21 factor.

22 And basically, as I've tried to explain to
23 you earlier, if you're in an interest rate environment where
24 the interest rates are 3 percent, and you factor the loan
25 and say, hey, great, it covers at 3 percent, but you expect

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1 inflation and the interest rates to go to 15 percent, you
2 know that at maturity the loan will not be able to be
3 refinanced. There's going to be a problem.

4 So it's used as a guideline, as an idea, some
5 sort of indication of what your risk is with regard to
6 rising interest rates.

7 122 Q. You described to me some of the process
8 changes, some of the process differences, between Manulife
9 and John Hancock, and one of them was that John Hancock
10 literally had a meeting at which a loan would or would not
11 be approved while Manulife had a process whereby signatures
12 would be secured for the -- going up the chain for the
13 approval of loans. Do I have that right?

14 A. Correct.

15 123 Q. During the transition from the meeting
16 format to the signature format process, was there a
17 transition?

18 MR. DAVIS: Objection. You may respond.

19 THE DEPONENT: I'm not sure I understand your
20 question.

21 BY MR. SCHER:

22 124 Q. So that the John Hancock process or
23 forms associated with that process remained in existence
24 while the Manulife process was introduced?

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MR. DAVIS: Objection. You may respond.

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1 THE DEPONENT: You mean... okay, I'm still
2 kind of lost. What do you mean by the Hancock forms? You
3 mean the...

4 BY MR. SCHER:

5 125 Q. In other words, I've seen minutes of
6 meetings that apparently didn't occur. A form that says the
7 meeting with respect to the approval of a loan. And then
8 appended to that was a form indicating a series of
9 signatures by the signing authorities. It appears to me to
10 have been a melding of two processes, one, the meeting
11 process, and the other, the signature process.

12 Is that an accurate description of what
13 happened?

14 MR. DAVIS: Objection. You may respond.

15 THE DEPONENT: I don't think it is. I think
16 the meetings basically ended at the date of the merger, and
17 we switched to the new system.

18 BY MR. SCHER:

19 126 Q. Okay.

20 A. That's basically what happened.

21 127 Q. Right. Now, in connection with the new
22 system, there were other changes in the processing of the
23 approval and disbursement of loans. Am I right?

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24 A. I don't think so.
25 128 Q. well, for example, was there --

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1 A. I mean --
2 129 Q. -- a separation between the credit
3 evaluation and the loan approval process?
4 A. It's all part of one and the same
5 process.
6 130 Q. --
7 A. I'm not really sure what you mean there
8 either.
9 131 Q. okay. There's a John Hancock employee
10 named Coyne, Patricia Coyne?
11 A. Mm-hm.
12 132 Q. She assumed different responsibilities
13 after the acquisition by Manulife. Do I have that right?
14 A. That's correct.
15 133 Q. And her responsibilities were in the
16 credit area, do I have that right?
17 A. That's correct.
18 134 Q. And is it your understanding that that
19 was a new responsibility for John Hancock in connection with
20 the approval of loans?
21 A. Yes, it was.
22 135 Q. okay. That's the one I was alluding to

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23 in that category. what change was that? Could you describe
24 that for me?

25 A. Well, I created a credit department, a

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1 group of people who would evaluate the various loan
2 proposals as they came in.

3 136 Q. Okay. And that evaluation process was
4 to have been separate and apart from the -- what other
5 process?

6 MR. DAVIS: Objection.

7 THE DEPONENT: It wasn't separate from any
8 other process, it was just separating the origination
9 function from the credit function.

10 BY MR. SCHER:

11 137 Q. Okay. And is it accurate to say that
12 the credit evaluation was a pre-requisite that -- and if you
13 need clarification I will, but... was a pre-requisite to
14 loan approval?

15 A. Generally.

16 138 Q. How would an exception to that rule --
17 what exceptions to that rule would exist?

18 A. If, for example, none of the credit
19 people were there.

20 139 Q. Fine?

21 A. They're on vacations or they're away.

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22 Depending on the speed of the transaction, how much legwork
23 had gone into the deal beforehand, how much had been
24 discussed with, you know, the authorized levels, with the
25 transaction, they might have been bypassed.

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1 140 Q. But generally speaking the credit
2 evaluation and the credit approval occurs prior to the loan
3 approval; is that right?

4 A. No, it's originated. It goes through a
5 credit process, and then it's approved.

6 141 Q. Yes.

7 A. That's the general process.

8 142 Q. Okay. That's what I was trying to say.
9 I probably misspoke. I apologize.

10 So the loan is, first originated, then credit
11 approved -- and then credit-evaluated, and then, assuming
12 it's passed all the tests, it's approved. Is that right?

13 A. Correct. Or declined.

14 143 Q. If it hasn't passed the test. Okay.

15 A. Well, even if it has passed the test it
16 can still be declined.

17 144 Q. Okay. Now, following the loan approval,
18 there is the process which results in the disbursement of
19 the loan. Do I have that right?

20 A. There is a process known as the closing

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21 process.

22 145 Q. Okay. And I've heard that described as
23 taking down the loan. That the vernacular?

24 A. That's the colloquialism.

25 146 Q. And then there's, and I've heard it

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1 referred to as the disbursement. Is that synonymous with
2 the closing?

3 MR. DAVIS: Objection. You may respond.

4 THE DEPONENT: I've always seen it as a
5 separate function. The loan is closed. The documents are
6 signed. The borrower has signed the commitment letter, all
7 the loan documents, et cetera, et cetera and then, once all
8 those documents are signed, then the disbursement occurs.

9 147 Q. Okay. Thank you. I appreciate that
10 clarification. So, after the closing, there is the
11 disbursement of the loan proceeds?

12 A. Mm-hm.

13 148 Q. Is that right? And is it accurate to
14 say that there are requirements associated with the
15 disbursement?

16 A. There can be.

17 149 Q. Was there anything in the Manulife/John
18 Hancock worlds pre-acquisition about which you're familiar
19 that suggested that the disbursement requirements at John

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20 Hancock and the disbursement requirements at Manulife were
21 different?

22 MR. DAVIS: Objection.

23 THE DEPONENT: Not that I'm aware of.

24 BY MR. SCHER:

25 150 Q. Not as far as you're aware?

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1 A. Not that I am aware of.

2 151 Q. And is it accurate to say that the
3 disbursement requirements include a checklist of criteria
4 which must be met before disbursement can be made?

5 A. It can.

6 152 Q. Is that typical, that the disbursement
7 requirements would have such a characteristic, that is,
8 they'd have criteria which must be met before disbursement
9 can be made?

10 A. It could have criteria. The criteria
11 would be based on the loan documentation. All that would be
12 set out in the loan documentation, as to what the criteria
13 was.

14 153 Q. Okay. So it would be accurate to say
15 that the closing function has requirements which must be met
16 before the closing can occur?

17 MR. DAVIS: Objection. Asked and answered.
18 You may respond again.

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19 THE DEPONENT: I'm not sure I really
20 understand the question. That's the problem. You got me
21 confused.

22 BY MR. SCHER:

23 154 Q. Okay. I'm just trying to understand the
24 major elements of the process from the origination of the
25 loan to the disbursement of the loan.

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1 And I think you said that one of those major
2 processes was the closing.

3 A. The closing, as I defined it, yes.

4 155 Q. And as you defined it, it includes a
5 list of elements which must be satisfied before it can
6 occur?

7 MR. DAVIS: Objection. He testified
8 generally, that's the case.

9 MR. SCHER: Right.

10 MR. DAVIS: Previously. So we've covered
11 this ground. You may respond.

12 THE DEPONENT: Yeah. The closing covers all
13 the legal documentation that has to be in place, and
14 whatever it was conditional on getting that legal
15 documentation has to be in place.

16 BY MR. SCHER:

17 156 Q. All right.

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18 A. It's difficult to close a loan if the
19 borrower hasn't signed the mortgage.

20 157 Q. Difficult but not impossible.

21 ---OFF THE RECORD DISCUSSION

22 BY MR. SCHER:

23 158 Q. Let me ask you just another general
24 question. You have been -- why don't we just, if you don't
25 mind, report your educational background and experience from

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1 the time you completed your highest level of formal
2 education. When did you graduate from college? University?

3 A. I graduated honors BA in History and
4 political science in 1972 from the University of Western
5 Ontario, located in London, Ontario. 1974, I graduated with
6 a masters in business administration from the same
7 university.

8 Since that time I have been in the lending
9 area, and anything from personal loans, commercial loans,
10 international lending, leasing, corporate loans, real
11 estate, lending, commercial mortgages, the whole gamut.

12 159 Q. When did you begin your employment with
13 Manulife?

14 A. November of 1994.

15 160 Q. And what position did you assume when
16 you began with Manulife?

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17 A. Vice president of U.S. mortgages.

18 161 Q. And so your position has remained the
19 same until November of 2004, do I have that right?

20 A. Essentially, yes.

21 162 Q. Did your duties and responsibilities
22 change over that period of time, from the time you began
23 with Manulife until November of 2004?

24 A. No, essentially the same.

25 163 Q. Okay. Can you tell me in general terms

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1 your personal involvement in connection with the loan in
2 question here, the borrower in question here, Vesterra, the
3 Avenel project in Pennsylvania, in general terms what has
4 been your involvement?

5 A. In general terms my involvement's been
6 more of a supervisory level. Part of the credit approval
7 process. That's basically it.

8 164 Q. Did you have any involvement in
9 connection with the initial contact between the originator
10 and the borrower, prospective borrower?

11 A. No.

12 165 Q. Did you have any involvement in the
13 negotiation of the proposal by the lender to the prospective
14 borrower?

15 A. No.

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16 166 Q. Were you aware of the negotiations
17 regarding the loan application, its preparation and
18 completion?

19 A. No.

20 167 Q. Can you report when you first learned of
21 the existence of this loan? What occasioned your learning
22 of it?

23 A. I don't... I don't know. It would have
24 come up in conversation, or working on some deal or
25 whatever, but...

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1 168 Q. Okay.

2 A. I don't know the date.

3 169 Q. That's fine. I'm just trying to get
4 your recollection. I'll show you some documents, which
5 perhaps will refresh your recollection.

6 Following the loan approval -- following the
7 credit approval, did you have any involvement in the -- you
8 signed off on the loan approval as well, right?

9 A. Correct.

10 170 Q. And then, following the loan approval,
11 did you have any involvement in connection with the events
12 which led to the borrower's not taking down or closing on
13 the loan? Did you become aware --

14 MR. DAVIS: Objection.

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15 BY MR. SCHER:
16 171 Q. -- that the borrower --
17 A. I'm not sure what events you're talking
18 about.
19 172 Q. Did you become aware that the loan would
20 not close?
21 A. Yes.
22 173 Q. And can you tell me generally how you
23 became aware of that?
24 A. I became aware of it through
25 conversation with people in the department who told me the

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1 loan was not going to close.
2 174 Q. Can you be more specific with respect to
3 that? who in the department?
4 A. I don't remember who exactly.
5 175 Q. Do you recall what your reaction was
6 when you learned that the loan would not close?
7 MR. DAVIS: Objection. You may respond.
8 THE DEPONENT: I was disappointed.
9 BY MR. SCHER:
10 176 Q. And anything else besides
11 disappointment?
12 A. No.
13 177 Q. Did you participate in any -- in any way

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14 in the decision to seek damages from the prospective
15 borrower?

16 A. Yes.

17 178 Q. And can you tell me what participation
18 you had in that decision?

19 MR. DAVIS: Objection. To the extent that
20 those discussions took place with counsel, either in-house
21 counsel or outside counsel, you should exclude that from
22 your response, and if those are the only discussions that
23 you recall having on the topic, then you should simply tell
24 that fact to Mr. Scher. Do not please close the content of
25 your communications with counsel or in the presence of

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1 counsel.

2 THE DEPONENT: Discussions I had, I believe,
3 were held with Bill McPadden concerning that the loan was
4 not going to close, and that we were entitled to the damage
5 under the loan documentation that had been signed by the
6 borrower.

7 179 Q. And that's Bill McPadden, right?

8 A. Yes.

9 180 Q. P-a-d-d-e-n.

10 And so Mr. McPadden reported to you, am I
11 right about that?

12 A. I'm pretty sure he was the one. Either

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13 he did or -- it could have been several people, but...

14 either Bill or there's a couple of other guys.

15 181 Q. And either Bill McPadden or someone else
16 subordinate to you reported to you that the loan would not
17 close and can you recall was that a meeting or a chance
18 conversation or how did that come about?

19 A. I don't know how it came about.

20 182 Q. Was it in your office? Do you remember
21 where you were when it happened?

22 A. It could have been on the phone. Could
23 have been many my office. Could have been in his office.
24 It could have been anywhere.

25 183 Q. Okay.

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1 A. We chat daily, so a variety of
2 locations.

3 184 Q. It's not a significant event in your
4 life for sure. Am I right about that?

5 MR. DAVIS: Objection.

6 THE DEPONENT: What do you mean by
7 significant? Like having a child?

8 BY MR. SCHER:

9 185 Q. No, I mean like something that you
10 remember?

11 MR. DAVIS: Objection. You can respond.

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12 THE DEPONENT: I remember... I remember the
13 effect.

14 186 Q. Okay. And what is it about the event
15 you remember?

16 A. What I remember about it? The borrower
17 was not going to live up to his obligations and draw the
18 money.

19 187 Q. Okay. Is that all that you remember
20 about that?

21 MR. DAVIS: Other than what he's already
22 testified to?

23 MR. SCHER: Yeah.

24 THE DEPONENT: Yeah, I think so.

25 BY MR. SCHER:

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1 188 Q. Okay.

2 A. I don't think what else would be.

3 189 Q. And who said that you were entitled to
4 damages, you or the person with whom you were speaking,
5 either Mr. McPadden or someone else?

6 A. Well, my question would have been, this
7 is a forward, because I remember the deal being a forward.
8 Are there damages involved, and what's going to happen with
9 that? That would have been my response.

10 190 Q. So by that you mean it was a rate lock

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11 forward commitment; is that right?

12 A. That's correct.

13 191 Q. And your question was, are there damages
14 associated in such a situation, right?

15 A. That's correct.

16 192 Q. And was your question answered?

17 A. Yes.

18 193 Q. And was it answered at that occasion?

19 A. Yes.

20 194 Q. And that answer was that -- was what?

21 A. That there are damages.

22 195 Q. Was there any specificity with respect
23 to the damages? Any formula or?

24 A. Not at that time, no.

25 196 Q. Subsequent to -- was there anything else

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1 that occurred in that conversation you had with respect to
2 the first time you learned that the borrower was not going
3 to close?

4 A. Not that I recall.

5 197 Q. Did you know why the borrower had
6 elected not to close?

7 A. Something came up about the property had
8 been sold. The comment had been made that the property had
9 been sold. The borrower had sold the property.

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10 198 Q. All right. So it was your understanding
11 based on what the communication you had with your
12 subordinate, either Mr. McPadden or someone else, that the
13 borrower had elected not to take down the loan, not to
14 borrow the money, because he had decided -- because he had
15 sold the property, right?

16 A. That's correct.

17 199 Q. And your question was, are you entitled
18 to damages under those circumstances? Right?

19 A. Correct.

20 200 Q. And the answer given to you was that you
21 are entitled to damages?

22 MR. DAVIS: Objection. Asked and answered.
23 You can respond again.

24 THE DEPONENT: Correct.

25 BY MR. SCHER:

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1 201 Q. And in response to that -- but that the
2 amount of damages was not known at that time, right, the
3 person with whom you were speaking didn't have the amount of
4 damages at that time, right?

5 MR. DAVIS: Objection. Calls for
6 speculation. You can respond.

7 THE DEPONENT: I didn't ask.

8 BY MR. SCHER:

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9 202 Q. You weren't given that information?

10 A. I did not ask and I was not given.

11 203 Q. Okay. Were you ever told from that day
12 forward that you were wrong about the property having been
13 sold? That you were misinformed?

14 MR. DAVIS: Objection.

15 THE DEPONENT: Not that I am aware of.

16 BY MR. SCHER:

17 204 Q. Were you ever informed that the property
18 in fact had not achieved the rent roll level that was
19 required in order for the loan to be made?

20 MR. DAVIS: Objection.

21 THE DEPONENT: No.

22 MR. DAVIS: I caution you, in responding to
23 these questions, that if you had discussion with counsel on
24 any of these topics, you should exclude those from any of
25 your responses.

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1 MR. SCHER: I'm going to try to cure, then.

2 205 Q. So, other than conversations with
3 counsel, have you ever learned that the property had not
4 been sold at the time you had your conversation with
5 Mr. McPadden?

6 MR. DAVIS: Same instruction. Other than
7 communication with counsel.

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BY MR. SCHER:

206 Q. My question said that.

Other than your conversation with counsel,
were you ever told, were you ever told, that the property
had, in fact, not be sold at the time Mr. McPadden reported
it to you?

A. No.

207 Q. And except for conversations with
counsel, had you ever been told that the borrower had not
achieved the rent level necessary to take down the loan?

A. No.

208 Q. Were you ever reported other than by
counsel the amount of damages that John Hancock could pursue
in this matter?

A. Not that I can remember. Probably, but
not that I can remember.

209 Q. Okay. Now, you asked the question at
this first meeting, at this first occurrence when you

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learned about the fact that the borrower was not going to
take the borrowing, you asked: Are there damages in
connection with this situation where it was a forward
commitment; right?

MR. DAVIS: Objection. Asked and answered.

BY MR. SCHER:

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7 210 Q. Okay. Fine, fine, fine.
8 why did you ask that question?
9 A. Because that is in the documentation,
10 that there be damages.

11 211 Q. So you just didn't know whether the
12 documents contained an entitlement to damages in such a
13 situation, right?

14 A. I had not read the documents myself, so
15 the question was, are there damages coming out of this, yes.

16 212 Q. Okay. And other than communications
17 with counsel, you never got an answer to that that you can
18 recall?

19 MR. DAVIS: Objection. Asked and answered.

20 THE DEPONENT: I thought I answered that one.

21 MR. DAVIS: You did.

22 BY MR. SCHER:

23 213 Q. You can answer it again, though.

24 MR. DAVIS: Objection. If you recall, other
25 than communication with counsel.

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1 THE DEPONENT: Can you repeat the question,
2 please? I've forgotten already.

3 BY MR. SCHER:

4 214 Q. Yeah, I can understand why. I don't
5 know why Mr. Davis is choosing to do this today, but we'll

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6 find out.

7 All right. So here's the same question.

8 MR. DAVIS: Because you're asking the same
9 question several times over.

10 MR. SCHER: You have a standing objection to
11 my repeating the question, so I'm going to continue doing
12 that, so you can have a standing objection. You don't need
13 to preserve it. You know that you're not permitted to make
14 such an objection at a deposition but you persist in doing
15 so --

16 MR. DAVIS: I'm certainly am entitled to make
17 an objection and I will continue to make the objections as
18 appropriate.

19 BY MR. SCHER:

20 215 Q. Other than communications with counsel,
21 you never got an answer to your question with respect to
22 whether or not John Hancock was entitled to damages in a
23 situation involving a forward commitment?

24 MR. DAVIS: Objection. Asked and answered,
25 and also contrary to the testimony he provided earlier.

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1 THE DEPONENT: I thought I'd answered that I
2 did get an answer, that we were entitled to damages.

3 BY MR. SCHER:

4 216 Q. Other than your communication with

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5 counsel, did you ever get an amount?

6 MR. DAVIS: Objection.

7 THE DEPONENT: Oh, you didn't ask it. You
8 didn't mention an amount.

9 BY MR. SCHER:

10 217 Q. That's okay.

11 A. You said an answer to the question
12 whether we were entitled to damages.

13 218 Q. Understood.

14 MR. DAVIS: Objection.

15 BY MR. SCHER:

16 219 Q. That's fine. He keeps on saying
17 "objection" but can you answer my question?

18 MR. DAVIS: Objection.

19 THE DEPONENT: Did I ever get -- I never -- I
20 don't know if I ever asked as to what the amount was in the
21 first place.

22 220 Q. Okay?

23 A. So how could I get an answer to whether
24 or not I got that? So...

25 221 Q. Bottom line is --

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1 A. ... bottom line --

2 222 Q. -- you never got an answer?

3 A. No.

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4 223 Q. You never got the amount of damages,
5 right?

6 MR. DAVIS: Objection.

7 THE DEPONENT: I never heard what the amount
8 was.

9 BY MR. SCHER:

10 224 Q. Okay.

11 ---Query by reporter

12 MR. DAVIS: I did object. And I want to
13 instruct the witness that -- it's the same instruction,
14 which is, other than, if you had communications with counsel
15 on that point, you should exclude them from your response.
16 That was not included in Mr. Scher's question, and I want to
17 make it clear that you should not disclose any privileged
18 communications with counsel.

19 BY MR. SCHER:

20 225 Q. Do you want to start it again? So let
21 me ask you the question again.

22 A. Sure.

23 226 Q. Sure. Other than communications with
24 counsel, did you ever get an answer to your question --
25 strike that.

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1 Other than communications with counsel, did
2 you ever learn whether you sought to learn or not, did you

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3 ever learn the amount of damages to which John Hancock
4 claimed entitlement?

5 A. No.

6 227 Q. Let me show you what I had marked as
7 Thomas Exhibit 1. And the convention is as follows. I'll
8 tell you the Bates stamp number, and that's the number
9 that's been applied to this document by John Hancock. But
10 it's JH 00074. Does that appear at the bottom of the page
11 that you have?

12 A. Mm-hm.

13 ---EXHIBIT 1 marked for identification

14 BY MR. SCHER:

15 228 Q. And this document includes, in sequence
16 through JH 77, right?

17 A. Correct.

18 229 Q. And it's a copy of a communication from
19 John Ferrie to appears to be to Avenel at Montgomery Square
20 or nominee care of Robert W. Kelly. Have I accurately
21 described the document dated June 18, 2004?

22 A. Based on those numbers you've given me,
23 yes.

24 230 Q. Okay. Have you ever, before today, seen
25 this document?

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1 THE DEPONENT: Excluding discussions with

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2 counsel?

3 MR. DAVIS: No, if you've seen it before
4 today, you may tell him whether you've seen it before, if
5 you recall it.

6 THE DEPONENT: Yeah. But I don't recall
7 whether I have or not.

8 BY MR. SCHER:

9 231 Q. Okay. Is this a loan proposal?

10 MR. DAVIS: Objection. You can respond.

11 THE DEPONENT: I don't know what it is. I
12 haven't read it.

13 232 Q. Okay. The first sentence reads:

14 "John Hancock Life Insurance Company..."

15 And then I'll skip the next words:

16 "... proposing the following loan terms."

17 would you call this a loan proposal by John Hancock? Or
18 not?

19 MR. DAVIS: Objection. Howard, I note that
20 this version isn't signed. Are you aware -- can you confirm
21 that this is the -- a signed version of this is what was
22 sent out, because I know that there were several drafts of
23 this document that floated around. And I believe a signed
24 version was produced.

25 (witness perusing document)

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BY MR. SCHER:

233 Q. Can you answer my question, Mr. Thomas?

MR. DAVIS: Objection.

THE DEPONENT: It appears to be a loan
proposal.

BY MR. SCHER:

234 Q. Okay. In this loan proposal there are
listed in the funding criteria, and you can take as much
time as you need, a description of a funding criteria called
the Loan to Value criteria. You see that? What?

A. Page is that on?

235 Q. I'm sorry, it's on the second page, and
it's Bates-stamped JH 75?

A. Mm-hm.

MR. DAVIS: There's a reference to it also on
page 1 that you should see.

BY MR. SCHER:

236 Q. So you want to interrogate the witness
too?

MR. DAVIS: If you're going to be pointing
him to the relevant section of the document, I want to make
sure he sees all of the relevant sections.

BY MR. SCHER:

237 Q. All right. Why don't we do this.
Mr. Thomas... why don't you take a moment and review this

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1 document, and then I'm going to ask you some questions about
2 it. Tell me when you're ready.

3 (witness perusing document)

4 A. Okay.

5 238 Q. You note that the Loan to Value and Debt
6 Service Coverage Ratios are included in this -- requirement,
7 sorry, are included in this proposal, right?

8 A. Correct.

9 239 Q. The 10% break-even, 10% constant, is
10 not, right?

11 A. Correct.

12 240 Q. Do you know why?

13 MR. DAVIS: Objection.

14 THE DEPONENT: I don't know why. It's not a
15 normal item you put in.

16 BY MR. SCHER:

17 241 Q. Okay. It's not a normal item to put in.
18 There's a reference to funding. I'm trying
19 to understand what that means. Does that mean disbursement,
20 on the second page?

21 MR. DAVIS: Objection.

22 THE DEPONENT: That would be my
23 understanding.

24 BY MR. SCHER:

25 242 Q. Yes. Now, you offered, in answer to my

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1 question regarding the 10% constant and 10% break-even, that
2 it's not a normal item you put into a proposal. Right?

3 A. That's correct.

4 243 Q. Why? You're gesturing "it's so
5 obvious," but...

6 A. Why would you?

7 244 Q. Okay. You can't offer any explanation
8 better than that, can you?

9 MR. DAVIS: Objection.

10 THE DEPONENT: A proposal is, basically a
11 proposal, when you put it in broad terms, we're willing to
12 lend 75 percent of the value, certain Debt Service Coverage
13 Ratio is a general kind of proposal. You don't go into all
14 the nitty gritty in a proposal as to what basis you're
15 looking at to deal. What's that have to do with that?

16 245 Q. Okay. You put that in the application,
17 right?

18 MR. DAVIS: Objection.

19 THE DEPONENT: Which application are you
20 talking about?

21 246 Q. The loan application?

22 A. There's two loan applications. You mean
23 the borrower's application?

24 247 Q. Yes.

25 A. I don't believe so. In the credit

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1 application.

2 248 Q. why don't you put it in the loan
3 application?

4 A. why?

5 249 Q. why don't you put it in a loan
6 application?

7 MR. DAVIS: You talk about when you say it,
8 you mean the 10% constant.

9 MR. SCHER: Yes.

10 MR. DAVIS: Or break even?

11 THE DEPONENT: But which application are you
12 speaking about?

13 BY MR. SCHER:

14 250 Q. The loan application. The John Hancock
15 loan application, not Manulife. I'm talking about the John
16 Hancock loan application where all the work is done up
17 front?

18 A. You mean the one where the borrower
19 signs?

20 251 Q. Yes?

21 A. why do we not put it in?

22 252 Q. Correct?

23 A. Because it's the John Hancock one.

24 253 Q. Because it's the John Hancock one. I
25 see. But if it were the Manulife one, it would be included;

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1 am I right about that?

2 A. No. Not necessarily.

3 254 Q. Well, why don't you put the John

4 Hancock -- why doesn't John Hancock put the 10% constant

5 requirement in its loan application?

6 A. Because we don't feel like putting it

7 in.

8 255 Q. Because they didn't feel like it?

9 A. Yeah.

10 256 Q. Okay. And that's the best answer you

11 can give me on that, isn't it?

12 MR. DAVIS: Objection. That's the answer he

13 did give you.

14 BY MR. SCHER:

15 257 Q. Is that the best answer you can give me

16 on that?

17 MR. DAVIS: Objection.

18 BY MR. SCHER:

19 258 Q. Is that the best answer you can give me

20 on that?

21 A. Yes.

22 259 Q. Okay. Did you ever ask anyone at John

23 Hancock why they did not include the 10% constant

24 requirement in the loan application?

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25 A. well, how do I know that they didn't?

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1 260 Q. Okay. So you don't know whether it's in
2 or not, do you?

3 A. No, I don't.

4 261 Q. It could be --

5 A. You told me it wasn't in it.

6 262 Q. That's fine. It could be in the loan
7 application, couldn't it?

8 MR. DAVIS: Objection. Calls for
9 speculation.

10 BY MR. SCHER:

11 263 Q. You can answer.

12 A. It could be. Yeah. It could be.

13 264 Q. So it's not a criteria that's so far
14 into a loan application that no one in the world would ever
15 include a -- no one at John Hancock would ever include a 10%
16 constant requirement; am I right about that?

17 MR. DAVIS: Objection.

18 THE DEPONENT: well, you're asking for an
19 answer that says it happens every time. That's not
20 necessarily the issue.

21 BY MR. SCHER:

22 265 Q. But it could happen?

23 A. It could happen, it could not happen, it

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24 could.

25 266 Q. There's no rule that says never ever

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1 ever put in a loan application in the John Hancock world
2 that has the 10% constant articulated, right?

3 A. To my knowledge, there's no rule.

4 267 Q. And the 10% constant requirement affects
5 the size of the loan, right?

6 MR. DAVIS: Objection. Asked and answered.

7 THE DEPONENT: It can affect the size of the
8 loan.

9 268 Q. And the size of the loan makes a
10 difference to the borrower, doesn't it?

11 A. I guess it would, yeah.

12 269 Q. You say I guess but you're being a
13 little bit facetious in that regard, right?

14 MR. DAVIS: Objection.

15 THE DEPONENT: Some borrowers apply for a
16 certain size of loan and they're quite happy with a
17 different amount that's approved.

18 270 Q. Okay.

19 A. So that's why I say I guess.

20 271 Q. I see. Okay. And you don't know
21 whether, in the circumstances of this particular borrower,
22 whether the size of the loan mattered?

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23 A. No, I don't.

24 272 Q. That's fair enough.

25 MR. DAVIS: Can we take a break.

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1 MR. SCHER: Any time.

2 ---Upon recessing at

3 ---Upon resuming at 10:54 a.m.

4 BY MR. SCHER:

5 273 Q. Have you had an opportunity to confer
6 with your counsel during break?

7 A. Yes.

8 274 Q. Good. And did you discuss the substance
9 of your testimony here?

10 MR. DAVIS: Objection. You need not disclose
11 to him what we discussed. That's privileged.

12 BY MR. SCHER:

13 275 Q. My next series of questions relates to
14 the inclusion of the 10% constant requirement in loan
15 applications by John Hancock. Are you aware of any instance
16 in which the 10% constant requirement was contained in a
17 loan application?

18 A. No.

19 276 Q. The 10% break-even requirement of
20 Manulife, are you aware of any instance where the 10%
21 break-even requirement of Manulife was contained in the

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22 comparable document at Manulife?

23 A. I'm aware it's happened. I wouldn't be
24 able to tell you which one.

25 277 Q. Okay. So there are occasions where the

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1 10% break-even requirement is contained in the comparable
2 document at Manulife, right?

3 A. That's correct.

4 278 Q. Can you tell me whether there are
5 criteria for the inclusion or exclusion for the 10%
6 break-even criteria in a Manulife application?

7 A. No.

8 279 Q. That's not contained in the Manulife
9 process binder, am I right about that?

10 A. Meaning?

11 280 Q. When the 10% break-even criteria should
12 be included --

13 A. Should or should not be included?

14 281 Q. Yes.

15 A. No.

16 282 Q. It's not included?

17 A. No.

18 283 Q. It's not in the binder?

19 A. It's not in the binder.

20 284 Q. And can you explain to me why it is that

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21 Manulife on occasion includes the 10% break-even and, to
22 your knowledge, John Hancock does not include a 10%
23 constant?

24 MR. DAVIS: Objection.

25 THE DEPONENT: Well, let me correct that. To

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1 my knowledge I have not seen it, but then again I haven't
2 been around Hancock for years and years and years.

3 BY MR. SCHER:

4 285 Q. Right?

5 A. So I'm just going off what I know, and
6 I'm saying only a few times in the Manulife that I am aware
7 of. So why it would be in mine and not theirs, or in
8 Manulife's, I should say, not mine, Manulife's, and not
9 Hancock's, I have no idea.

10 286 Q. Okay. Now, you reported to me a
11 conversation you had either with Mr. McPadden or another
12 employee at John Hancock when you learned that the loan
13 which is the subject of this dispute would not close. And
14 I'd like to ask you a question about that.

15 You told me that one question that you asked
16 at that time was: Are we damaged? I may have gotten that
17 wrong. Is that what you said?

18 MR. DAVIS: Objection. Asked and answered.

19 BY MR. SCHER:

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20 287 Q. Did you have in mind at that time any
21 loss that you suffered as a result of the loan not closing?

22 A. No.

23 288 Q. Now, you said that you were under the --
24 you were of the belief that the property had been sold, the
25 subject property had been sold. You recall that testimony?

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1 A. I was of the belief that's the reason
2 why the loan was not closing, was because the property had
3 been sold.

4 289 Q. Correct. I understood that's what you
5 said.

6 Did you subsequently learn that the reason
7 for the loan not closing was the fact that the rental
8 achievement level was well below what was required for the
9 loan to close?

10 A. No.

11 290 Q. I'd like to show you what I've had
12 marked as Thomas Exhibit 2. If you would take a look at
13 that, sir, and let me know when you've completed a review of
14 that document.

15 (witness perusing document)

16 ---EXHIBIT 2 marked for identification.

17 BY MR. SCHER:

18 291 Q. Just so you think that I'm not -- it's

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19 my belief that the pages 733 through 736 are identical to
20 Thomas 1, except that this one is signed by Mr. Koller and
21 dated.

22 MR. DAVIS: I point out, Howard, that that's
23 not the case. Because, for example, if you just look under
24 spread and interest rate --

25 MR. SCHER: You're absolutely right.

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1 MR. DAVIS: -- you can see that there's a
2 different interest rate cited there.

3 BY MR. SCHER:

4 292 Q. I apologize, Mr. Thomas. You should
5 take your time and review that document, if you'd like.

6 THE DEPONENT: Okay.

7 BY MR. SCHER:

8 293 Q. If you look at the last page of the
9 Exhibit, the document headed "Exhibit 1," it's on a page
10 that's Bates-stamped JH 00737. Do you see that?

11 A. Mm-hm.

12 294 Q. Now, is that, Exhibit 1, examples of
13 reserve calculations, is that a document that's derived from
14 information from the borrower?

15 MR. DAVIS: Objection.

16 A. I would assume so.

17 295 Q. And is it accurate to say that by

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18 countersigning this loan proposal the borrower is agreeing
19 that the examples of reserve calculations shown on Exhibit 1
20 are accurate?

21 MR. DAVIS: Objection. Calls for a legal
22 conclusion.

23 THE DEPONENT: I would have no idea.

24 BY MR. SCHER:

25 296 Q. Okay. Is it fair to say that John

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1 Hancock is using Exhibit 1 in connection with its loan
2 proposal?

3 MR. DAVIS: Objection.

4 THE DEPONENT: What do you mean by using?

5 BY MR. SCHER:

6 297 Q. Employing, including the calculations
7 contained on Exhibit 1 as part of their loan proposal?

8 MR. DAVIS: Objection.

9 THE DEPONENT: It may or may not. I don't
10 know.

11 BY MR. SCHER:

12 298 Q. Is Exhibit 1 part of Thomas Exhibit 2?
13 Yes?

14 A. Yeah.

15 299 Q. Yes, it is?

16 A. Yes, it is.

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17 300 Q. Does Manulife have a comparable
18 calculations that they employ in connection with the credit
19 review and loan approval process?

20 MR. DAVIS: Objection.

21 THE DEPONENT: What do you mean by
22 comparable? You mean the same format?

23 BY MR. SCHER:

24 301 Q. No, I mean using projected rent, net
25 operating income, and loan criteria tests?

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1 A. I think every institution uses whatever
2 they need to use in order to get a handle on the
3 transaction.

4 302 Q. And does Manulife do that?

5 A. Yes.

6 303 Q. Is this form of loan proposal which is
7 Thomas Exhibit 2 a Manulife form of loan proposal or a John
8 Hancock legacy form of proposal?

9 MR. DAVIS: Objection.

10 BY MR. SCHER:

11 304 Q. Or something else?

12 THE DEPONENT: It's a form of proposal that's
13 pretty well standard through the industry.

14 305 Q. Okay.

15 A. So I don't know.

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16 306 Q. There's nothing unusual about it?
17 A. Nothing unusual, I don't think.
18 307 Q. Nothing peculiar to John Hancock or
19 Manulife that leaps to your eye?
20 A. Right.
21 308 Q. Am I right about that?
22 A. No.
23 309 Q. I'm right about that?
24 A. Yeah, you're right about that.
25 310 Q. Okay. And is it accurate to say that

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1 the Exhibit 1 to Thomas Exhibit 2 was -- let me strike that.
2 The loan proposal is part of the origination
3 process; is that right?
4 A. It may or may not be.
5 311 Q. But it could be part of the approval
6 process as well?
7 A. Could be or could not be.
8 312 Q. Okay. And John Hancock, in the John
9 Hancock world in whatever time it is, June of 2004, was the
10 loan proposal part of the origination process?
11 A. It appears that it was in this case.
12 313 Q. Okay. And the reason you know that is
13 because it's from John Ferrie?
14 A. Yes.

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15 314 Q. And John Ferrie was the field
16 representative for John Hancock in connection with this
17 transaction, right?

18 A. That's correct.

19 315 Q. I'll show you what I've had marked as
20 Thomas Exhibit 3. That's a copy of an e-mail from John
21 Ferrie to Joe Kelly at Koller Kelly with carbon copies to
22 another Kelly and to Timothy Malik. It's a Bates-stamped
23 document, JH 00219. Do you have that in front of you, sir?

24 A. Yes, I do.

25 316 Q. If you would take a minute to review it

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1 and tell me when you've completed it, I'd like to ask you a
2 question about it.

3 (witness perusing document)

4 ---EXHIBIT 3 marked for identification

5 THE DEPONENT: Okay.

6 BY MR. SCHER:

7 317 Q. Having reviewed this document, do you
8 recall participating in any discussions in which a change
9 from a proposal to limit exposure for not closing to a
10 maximum of 5 percent was eliminated?

11 A. I'm not aware.

12 318 Q. Did Manulife have any process whereby
13 damages resulting from the non-closing of a loan would be

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14 limited to 5 percent?

15 A. It's hard to answer. It depends.

16 319 Q. Some dealing maybe, some deals not.

17 A. Yeah.

18 320 Q. You see in this e-mail there's a

19 sentence that reads:

20 "Therefore, you need to deliver the loan or

21 be liable for all costs."

22 Do you see that?

23 A. Mm-hm.

24 321 Q. Do you have any understanding as to why

25 the word "costs" is capitalized?

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1 A. I have no idea.

2 322 Q. You see the sentence that reads:

3 "We had originally agreed to limit your

4 exposure to a maximum of 5 percent."

5 Do you see that?

6 A. Yeah.

7 323 Q. Do you have any understanding as to --

8 or did you ever know that John Hancock had originally agreed

9 to limit the exposure to a maximum of 5 percent?

10 A. No.

11 324 Q. We talked earlier about the damages.

12 This document talks about losses. Are you aware of any

06mr31-ROUGH DRAFT Thomas.txt

13 losses that John Hancock suffered as a result of the loan
14 not closing, other than conversations with counsel?

15 A. It hasn't been quantified.

16 325 Q. Hasn't, has not been quantified?

17 A. To my knowledge. I've not seen any
18 quantification of it.

19 326 Q. In this Thomas Exhibit 2 there's a
20 sentence reads:

21 "Based on the volume of forwards we are
22 doing, this risk is not acceptable."

23 (quote as read)

24 My question focuses on that first phrase.

25 Are you aware of the volume of forwards that John Hancock

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1 was doing as of July 29th, 2004?

2 A. I am aware to the extent that I know we
3 were doing quite a few forwards.

4 327 Q. Okay. And by forwards we're talking
5 about forward commitments, right?

6 A. Forward commitments.

7 328 Q. And then the sentence immediately before
8 that says:

9 "If we don't close and interest rates have
10 moved against us, we could be subject to
11 unlimited losses."

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(quote as read)

12

13 Do you have any idea to what that sentence is referring?

14

MR. DAVIS: Objection. Calls for

15

speculation.

16

THE DEPONENT: I don't. I don't know what

17

it's referring to.

18

BY MR. SCHER:

19 329

Q. Okay. You don't know what Mr. Ferrie is

20

referring to in that sentence?

21

A. That's correct.

22 330

Q. Now, can you tell me where in the

23

processing of a loan the forward commitment occurs, that is,

24

presumably it's after the origination, but can you tell me

25

where in the process with respect to credit and approval the

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1 forward commitment occurs?

2

MR. DAVIS: Objection.

3

THE DEPONENT: It can occur...

4

MR. DAVIS: Sorry. Objection. You can

5

respond.

6

THE DEPONENT: It can occur anywhere.

7

BY MR. SCHER:

8 331

Q. Anywhere along the line?

9

A. Yeah.

10 332

Q. Okay. Is there a credit evaluation made

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11 prior to the time the forward commitment is undertaken?

12 A. It depends.

13 333 Q. What does it depend on?

14 A. Well, it depends on -- maybe I should
15 bake up. Clarify what you mean by "credit evaluation." Of
16 the borrower? Of the property? Of... what are you
17 referring to.

18 334 Q. Is there any credit evaluation, whether
19 of the borrower or the property or anything else?

20 A. There is a credit evaluation. Depends
21 how far... how far you are into the process, and it depends
22 too on how far forward the forward is.

23 335 Q. Okay. So let's say we have a forward of
24 one year, and what I'm asking you is not where you are in
25 the process, but I'm asking you where you have to be in the

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1 process in order to secure a forward commitment. Is there
2 any requirement that you be advanced in the process in order
3 to secure a forward commitment?

4 A. There is -- well, you have to be sure
5 that the loan will be approved before you actually enter
6 into a forward agreement.

7 336 Q. Okay. And how do you know that the loan
8 will be approved under those circumstances?

9 A. How do you know?

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10 337 Q. Yes?
11 A. You don't.
12 338 Q. Okay.
13 A. You don't know for sure.
14 339 Q. You conduct pipeline meetings every two
15 weeks at John Hancock?
16 A. I don't conduct them, no.
17 340 Q. They are conducted?
18 A. They are conducted.
19 341 Q. Were they conducted before Manulife
20 assumed ownership of John Hancock?
21 A. I believe so.
22 342 Q. And did you ever participate in those
23 pipeline meetings?
24 A. The odd one, yes.
25 343 Q. The odd?

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1 A. The odd one.
2 344 Q. And did you ever indicate that prior to
3 making a forward commitment the application had to be
4 approved?
5 A. No.
6 345 Q. Was that the case at John Hancock before
7 Manulife made the acquisition?
8 A. I don't know.

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9 346 Q. In terms of authority, is it accurate to
10 say that you personally were the person who was responsible
11 for making the decision to approve a forward commitment?

12 A. That wasn't my decision. The size of
13 loan, it went up. You saw the last signature.

14 347 Q. I was speaking in specific terms with
15 respect to a forward commitment.

16 Was there a different process for the
17 approval of a forward commitment than for the approval of a
18 loan?

19 MR. DAVIS: Objection. How, when you say
20 forward commitment versus the approval of a loan, are you
21 talking about the loan commitment?

22 MR. SCHER: You know what? Let me clarify
23 that.

24 348 Q. In fact, let me just ask you this. Rate
25 lock is what I'd like to ask you about.

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1 You're familiar with the concept of a rate
2 lock?

3 A. Yes.

4 349 Q. And are you familiar with the concept of
5 a rate lock before a loan is approved?

6 A. Yes.

7 350 Q. And is it accurate to say that you are

06mr31-ROUGH DRAFT Thomas.txt

8 personally responsible, during the period of time of this
9 loan, that would be July/August of 2004, for agreeing to a
10 rate lock?

11 A. No, I wasn't.

12 351 Q. Who was?

13 A. Barry Nectow.

14 well, to a rate lock. I mean, once again, as
15 I explained earlier, it depends on the length of the rate
16 lock.

17 352 Q. We're talking about a rate lock for a
18 year. That the rate would be locked for a year. Are you
19 the person who's responsible for that?

20 A. That is part of the credit application
21 process.

22 353 Q. Okay. So what does that mean, that...
23 who is in charge of the credit application process to
24 approve a rate lock?

25 A. Sorry, I don't understand your question.

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1 354 Q. Okay. Let me try again. Let me do
2 this.

3 I'll show you what I've marked as Thomas
4 Exhibit 4.

5 ---EXHIBIT 4 marked for identification.

6 BY MR. SCHER:

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7 355 Q. And it's a document that's an e-mail
8 from Mr. Malik to Mr. Ferrie Bates-stamped JH 00218. Do you
9 have that before you, sir?

10 A. Mm-hm.

11 356 Q. And you can read it?

12 A. Yeah.

13 357 Q. Can you explain to me why Mr. Malik says
14 in this e-mail that he has to see Ivor prior to making the
15 rate lock?

16 MR. DAVIS: Objection. Calls for
17 speculation. You can answer that.

18 BY MR. SCHER:

19 358 Q. Do you know?

20 A. No.

21 359 Q. Is it accurate to say that there could
22 not be a rate lock without your approval?

23 A. I'm sure there could be. Yes.

24 360 Q. There could be without your approval?

25 A. Yes.

*** ROUGH DRAFT ***
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1 361 Q. And is it accurate to say that once a
2 rate lock had been made, the loan was effectively approved?

3 MR. DAVIS: Objection. Calls for a legal
4 conclusion.

5 THE DEPONENT: No.

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6 BY MR. SCHER:

7 362 Q. At the time that the rate lock was
8 approved, had the loan application been reviewed?

9 A. I don't know.

10 363 Q. What are the economic consequences of a
11 rate lock by John Hancock?

12 MR. DAVIS: Objection. You can respond.

13 THE DEPONENT: The economic consequences of a
14 rate lock? One generally is, you would twin deal. You
15 would be able to offer something that the competition
16 couldn't. If you lock the rate, maybe somebody else isn't
17 willing to lock the rate.

18 364 Q. Okay.

19 A. That's one consequence of a rate lock.

20 365 Q. Any others?

21 MR. DAVIS: Objection.

22 THE DEPONENT: What other kind of
23 consequences are you thinking of?

24 BY MR. SCHER:

25 366 Q. Well, when a rate lock is concluded,

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1 does that have a financial effect on John Hancock or
2 Manulife?

3 MR. DAVIS: Objection.

4 THE DEPONENT: At the date of approval of a

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5 rate lock.

6 367 Q. Yes?

7 A. Other than winning the deal, no.

8 368 Q. Okay. It's a competitive tool. Am I
9 right about that?

10 A. It can be.

11 369 Q. Are you familiar with the Regatta loan?

12 A. I've heard the name.

13 370 Q. Other than in connection with counsel,
14 or communication from counsel, are you aware of the decision
15 by John Hancock to walk away from the Regatta loan for the
16 amount of fees paid by Regatta?

17 A. No.

18 MR. DAVIS: Objection. You can respond.

19 BY MR. SCHER:

20 371 Q. Are you aware that in connection with
21 the Regatta loan, John Hancock did not claim entitlement to
22 losses beyond the amount of the fees paid by Regatta?

23 MR. DAVIS: Objection.

24 THE DEPONENT: This is outside of legal
25 counsel?

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1 BY MR. SCHER:

2 372 Q. Outside of legal counsel; yes?

3 A. No.

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4 373 Q. To the best of your knowledge, did the
5 Regatta loan and its non-closing have any effect whatsoever
6 on the decision by John -- the handling of the Avenel loan
7 by John Hancock?

8 A. To the best of my knowledge, no.

9 374 Q. I'll show you what I've marked as Thomas
10 Exhibit 5.

11 ---EXHIBIT 5 marked for identification

12 BY MR. SCHER:

13 375 Q. And it's a document Bates-stamped JH
14 1128 through 1148. Do you have that before you, sir?

15 A. Yes, I do.

16 376 Q. Can you tell me what this is? Just the
17 form. What do you call it?

18 A. Well, the first two pages are a summary
19 and authorized signature page. Actually, the first -- yeah,
20 the first two pages are that. The next two pages are a
21 brief summary of the deal with the financial statement
22 analysis in the Manulife format. And 32 on are in the
23 Hancock format.

24 377 Q. Okay. So let me see if I have it right.

25 A. And, sorry...

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1 378 Q. That's all right.

2 A. I lied to you. And 19 is... 19 and

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3 20... where's 22? Anyway, 19 and 20 are the risk-rating
4 worksheet, Manulife format.

5 MR. DAVIS: I think when you were
6 referring -- Mr. Thomas said 19 and 20, I think you were
7 referring to the numbers in the middle of the page, middle
8 of the bottom, not the Bates stamp.

9 THE DEPONENT: Sorry. My error, sorry. I'm
10 not good at numbers. 47 and 48 are the Manulife format for
11 risk-rating.

12 BY MR. SCHER:

13 379 Q. So let me see if I have this right.
14 Starting at the beginning, JH 1128 and 1129 are the summary
15 of the proposed transaction, including --

16 A. Well, 28, 29 -- 28, 29, 30, and 31 is a
17 summary of 32 through 46.

18 380 Q. Okay. And 32 through 46 are the
19 Manulife form --

20 A. No, it's the Hancock form.

21 381 Q. That's the Hancock form?

22 A. That's the Hancock form.

23 382 Q. Okay.

24 A. It was basically a translation into a
25 Manulife format.

*** ROUGH DRAFT ***
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1 383 Q. And then 47 and 48 are the rating of --

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2 A. The Manulife rating.
3 384 Q. The Manulife rating form; correct?
4 A. Correct.
5 385 Q. Now, you'll see that on page 1128 there
6 are the words "original red line" or original -- I don't
7 know what it is. Do you know whose handwriting that is?
8 A. You talking about the upper right-hand
9 corner?
10 386 Q. Yes.
11 A. No, I don't.
12 387 Q. Okay. And then you'll see interlineated
13 in the -- within that box, the specific conditions box.
14 A. Mm-hm.
15 388 Q. In the phrase headed disbursement
16 requirements?
17 A. Correct.
18 389 Q. There is three letters, "NCF." Do you
19 know what NCF stands for?
20 A. Net cash flow.
21 390 Q. And then, following the ratio, there is
22 the inclusion of the 10% break-even?
23 A. Correct.
24 391 Q. You see that?
25 A. Yes, I do.

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1 392 Q. Do you know whose handwriting that is?

2 A. Yes, I do.

3 393 Q. And whose is it?

4 A. It's mine.

5 394 Q. Ah. I'm sorry. I feel like Sherlock

6 Holmes. Just kidding?

7 MR. DAVIS: The Grail, the Grail.

8 BY MR. SCHER:

9 395 Q. I presumed as much but regardless.

10 And do you recall -- strike that.

11 why did you add that to the disbursement

12 requirements on Thomas Exhibit 5? why did you add the words

13 "NCF" and "10% break-even"?

14 A. I added that as a condition so that

15 subsequent people -- so we knew why, on what basis -- let me

16 rephrase -- on what basis it was being approved. It wasn't

17 just a straight debt service or whatever, it was based on

18 the Manulife rating system.

19 So it would meet the Manulife rating system.

20 So as part of the conversion from the Hancock rating system

21 to the Manulife rating system.

22 396 Q. And that's why you added the 10%

23 break-even at that point?

24 A. That's correct.

25 397 Q. And that is included in the disbursement

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1 requirements so that, when the loan reached the disbursement
2 process, the disburser would know that that 10% break-even
3 requirement needed to be met. Am I right about that?

4 MR. DAVIS: Objection.

5 THE DEPONENT: It wasn't for the person doing
6 the disbursements. It was for the person who would be
7 finalizing the loan documentation to make sure that the
8 numbers they were coming up with would support that
9 guideline.

10 BY MR. SCHER:

11 398 Q. Okay. So that in the closing and
12 disbursement processing, the instructions contained in
13 disbursement requirements would be followed?

14 MR. DAVIS: Objection.

15 BY MR. SCHER:

16 399 Q. Is that right?

17 MR. DAVIS: Objection. That's contrary to
18 what he just testified to. But if you could please respond.

19 THE DEPONENT: This is telling the credit
20 people that the numbers that are showing there have to work
21 on the Manulife basis. So when they are sending the
22 approval letter back out to the field or to whomever they're
23 sending it, and whoever the lawyers, whoever is going to be
24 working on the documentation, they have to make sure -- this
25 isn't a subsequent condition, they have to make sure that

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1 the numbers that they're using here were according to that
2 formula.

3 BY MR. SCHER:

4 400 Q. You said that when the --

5 A. Not something that shows up later on
6 when the monies are to be disbursed, somebody pulls it out
7 and says, do this.

8 401 Q. All right.

9 A. This is to make sure that when we say
10 rents of that number and that number, those numbers are
11 calculated on the basis of providing that sort of break-even
12 rate.

13 402 Q. So when the loan documentation was
14 finalized, would be finalized, the numbers had to meet the
15 guideline, do I have that right?

16 A. Yes.

17 403 Q. And when you say "the loan documentation
18 finalized," you mean the loan documentation that is used at
19 the closing?

20 MR. DAVIS: Objection. You can respond.

21 THE DEPONENT: What I'm saying is, if the
22 numbers show it up in the documentation, if there were
23 anything showing in the documentation, the disbursement
24 would be made according to this condition, this condition,
25 this condition, whatever number going in there, we had to be

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1 sure that that number gave us this 10% break-even.

2 404 Q. Okay. And I'm just trying to get where
3 in time that review of numbers occurred. Occurs.

4 A. It occurs right up front. Well, depends
5 on the document. The document may say, we'll review this a
6 year out, two years out. Or it may say, the number we need
7 before we can do anything is this dollar number.

8 405 Q. And the anything that we can do, "the
9 number we need before we can do anything," meaning, fund the
10 loan?

11 A. Mm-hm.

12 406 Q. Isn't that right?

13 A. Yes.

14 407 Q. Okay. So the documentation --

15 A. If that's in the loan document.

16 408 Q. If it's in the loan document. So what
17 this specific condition is stating with respect to
18 disbursement requirements is that when the loan is
19 documented and before disbursement of the loan is made, the
20 criteria set forth there must be met. Is that right?

21 MR. DAVIS: Objection I don't think it's
22 quite what he testified to but you can respond.

23 THE DEPONENT: No.

24 BY MR. SCHER:

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25 409 Q. Well, please clarify.

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1 A. I'm trying.

2 410 Q. I know. I apologize for being opaque?

3 A. The purpose of this -- well, I'll start
4 again.

5 The purpose of this was to make sure that the
6 numbers that were in this line and would be reviewed by
7 people above me in the signing authority range, understood
8 these numbers were calculated on the basis of meeting
9 Manulife's standard of a 10% break-even.

10 Now, this would go back to a credit person,
11 who would then write up a letter to John Ferrie or somebody
12 or other saying: This is the situation.

13 So, if those numbers showed up in the final
14 loan document, then whatever is in the final loan document
15 governs what's going to happen and what's going to be
16 disbursed.

17 So, if this number of 4 million-2 will not
18 give the 10% break-even, then the loan document should show
19 what the right number would be that gives that 10%
20 break-even.

21 This is an internal document. This document
22 is giving instructions to the people who are in the process
23 of trying to finalize the loan.

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24 411

Q. Right?

25

A. This is not something we send the

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1 borrower.

2 412

Q. Oh, I understand that. This document is
3 exclusively internal, right?

4

A. That's correct.

5 413

Q. And this information that's contained in
6 this document is not shared with the borrower, right?

7

MR. DAVIS: Objection. You mean none of the
8 information or you're saying that --

9

BY MR. SCHER:

10 414

Q. This document is not shared with the
11 borrower, am I right about that?

12

A. I can't answer that. I don't know

13

whether it would be or not. Normally it would not be.

14 415

Q. Would not be. But it is shared with the
15 person responsible for the closing and disbursement, right?

16

A. Correct.

17 416

Q. And so the person responsible for
18 closing and disbursement would know that the 10% break-even
19 had to be met by the numbers that were produced at the time
20 of the closing, right?

21

A. Not necessarily. Depends what ends up

22

in the loan document.

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23 417 Q. Well, if that's what ends up in the loan
24 document. If this approval --

25 A. If this showed up in the loan document,

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1 then, yes. But I don't know whether this showed up in the
2 loan document or not.

3 418 Q. What's the loan document you're making
4 reference to?

5 A. The mortgage document. The commitment
6 letter, mortgage document, whatever documents are in place
7 that guide these issues.

8 419 Q. So what's a mortgage document? Is it
9 the mortgage?

10 A. Yes.

11 420 Q. So it's the agreement between the
12 borrower and the lender which evidences the obligation,
13 right?

14 MR. DAVIS: Objection. I think it's very
15 confused. There are a lot of those out there but you can...

16 THE DEPONENT: Well, there's promissory
17 notes, there's commitment letters, there's mortgages,
18 there's side agreements. You know. So --

19 BY MR. SCHER:

20 421 Q. I just want to know what you're
21 referring to. When you say "loan document," I just want to

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22 know, you're talking about --

23 A. I'm referring to...

24 422 Q. All the documents...

25 A. All the documents.

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1 423 Q. All the documents that are used --

2 A. Signed by both parties.

3 424 Q. Okay. That's what I thought you meant.

4 The documents that are signed by both parties, although if

5 it's a note it's probably only signed by the borrower, but

6 whatever, it's signed by the borrower to evidence the

7 promise to repay and evidence the impediment on title that

8 the mortgage reflects, right?

9 MR. DAVIS: Objection. You can respond.

10 BY MR. SCHER:

11 425 Q. Isn't that what you mean by loan

12 documents?

13 MR. DAVIS: Objection. You can respond.

14 It's already asked and answered, but that's fine.

15 BY MR. SCHER:

16 426 Q. Okay?

17 A. I'm thoroughly confused. You're asking

18 me to rhyme off a list of possible documents we might use,

19 and I don't know which ones we used in this case.

20 BY MR. SCHER:

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21 427 Q. Okay.
22 A. And they differ.
23 428 Q. whichever documents were used in this
24 case at the time the loan would have been taken down or
25 closed would, by this requirement, have to contain numbers

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1 to support the 10% break-even. Am I right about that?
2 MR. DAVIS: Objection. You can respond.
3 THE DEPONENT: Should include it.
4 429 Q. Yes?
5 A. But not necessarily -- would not
6 necessarily mention the 10%.
7 430 Q. But the numbers would meet it?
8 A. As far as I'm concerned, if the
9 number -- the number in that... whatever document it is
10 should meet this test up front, going in.
11 431 Q. And if it doesn't, then the loan is not
12 made or is made -- or is sized in accordance with the 10%
13 break-even?
14 A. No. If it's in the loan document that
15 that is the dollar amount, the loan is made and the loan is
16 advanced. We've made a mistake.
17 432 Q. I see. So then by the time the loan
18 document is prepared, the size of the loan has been
19 determined by the numbers which support it, right?

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20 A. That's correct. Or should be.
21 433 Q. That's the way it's supposed to work?
22 A. Depends a lot on the transaction.
23 434 Q. Right?
24 A. Some are determined later and some
25 aren't. I mean, every deal is different.

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1 435 Q. Okay. But you added this phrase "and
2 10% break-even" because it mattered to you, right? It
3 mattered to Manulife?
4 A. It mattered to Manulife because I was
5 introducing and reinforcing the Manulife rules for these
6 kinds of transactions.
7 436 Q. After this occurred, and can we
8 approximate that your signature, take a look at that was on
9 August 10, 2004?
10 A. Correct.
11 437 Q. And so your interlineation, that is,
12 that 10% break-even, occurred at about the time you signed
13 it?
14 A. That's correct.
15 438 Q. And looks like the last day on it is the
16 same date, August 10th, 2004, including Mr. English and
17 Mr. Thomson, right?
18 A. Correct.

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19 439 Q. Did you have any conversations or
20 communications with anyone with respect to your modification
21 of Thomas Exhibit 5, that is, the interlineations?

22 A. I don't remember any specific discussion
23 but most likely with Tim Malik.

24 440 Q. The investment officer?

25 A. Yeah.

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1 441 Q. Do you recall that you did have a
2 conversation with Mr. Malik?

3 A. No, I don't recall whether I did or not.
4 I would make the assumption I did.

5 442 Q. Okay. And did you tell Mr. Malik that
6 he had to get this 10% constant or this 10% break-even into
7 the loan application process?

8 MR. DAVIS: Objection. You can respond.

9 THE DEPONENT: Sorry?

10 MR. DAVIS: You can respond.

11 THE DEPONENT: Oh. I'm not quite sure what
12 you mean by pitting it... I've tried to explain to you
13 before. It relates to the size of that number, that 4
14 million -- I'm sorry, whatever.

15 BY MR. SCHER:

16 443 Q. 4 million 2 as you pointed out?

17 A. The idea is, when you're calculating the

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18 net income or all your income numbers, it's got to work out
19 that the end result is this provides the 10% break-even.
20 That would have been the discussion with Mr. Malik.
21 444 Q. okay. Did you, in your discussion with
22 Mr. Malik, tell Mr. Malik that he should have that 10%
23 break-even in the loan application document signed by the
24 prospective borrower?
25 A. No.

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1 445 Q. Do you know whether or not he sought to
2 prepare a loan application which included that criteria --
3 criterion?
4 A. Do you mean a loan application signed by
5 the borrower?
6 446 Q. Correct. Yes.
7 A. I'm not aware.
8 447 Q. Did you know whether the field
9 officer -- I call him field officer -- Mr. Ferrie?
10 A. Yeah, John Ferrie.
11 448 Q. John Ferrie. What's his position?
12 A. Regional manager, regional VP, whatever.
13 449 Q. Did you know that the regional
14 manager -- did you suggest that the regional manager contact
15 the prospective borrower to inform it of this criterion?
16 A. No.

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17 450 Q. Did you tell Mr. Malik to not tell the
18 borrower, Vesterra, of the 10% break-even criteria?

19 A. No.

20 451 Q. Did you tell Mr. Ferrie not to tell
21 Vesterra?

22 A. No.

23 452 Q. Do you know what happened after you put
24 in the interlineation of 10% break-even with respect to this
25 particular loan application? Do you know anything that

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1 happened as a consequence of your interlineation?

2 A. In general or do you mean in this
3 particular case or?

4 453 Q. In this particular case.

5 A. Particular case? The numbers were
6 reworked.

7 454 Q. Okay. Anything else? Other than the
8 numbers being reworked, was there anything else that was a
9 consequence of your interlineating that requirement?

10 MR. DAVIS: Objection.

11 THE DEPONENT: I'm sorry, I don't understand
12 what you mean by "consequence."

13 BY MR. SCHER:

14 455 Q. Well the numbers were reworked.

15 Anything else like that?

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16 MR. DAVIS: Objection.
17 THE DEPONENT: The numbers were reworked.
18 BY MR. SCHER:
19 456 Q. That's all you know?
20 A. Yeah.
21 MR. DAVIS: Objection.
22 BY MR. SCHER:
23 457 Q. And when you say "numbers were
24 reworked," do you mean that the numbers which were contained
25 in the loan application were changed, right?

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1 MR. DAVIS: Objection. You're saying that he
2 changed the application?
3 MR. SCHER: I don't know. I didn't ask him
4 whether he did. Let's listen to the question. Maybe I got
5 it wrong.
6 458 Q. When you say said the numbers were
7 reworked --
8 A. How come I don't get one of those
9 machines?
10 459 Q. When you said the numbers were reworked,
11 what do you mean by that? They were changed, right?
12 MR. DAVIS: I don't think you're reading the
13 whole question. Would you reread the whole question?
14 MR. SCHER: No, I'm not asking him the same

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15 question. I withdrew that question. Let me ask this
16 question.

17 460 Q. When you say "the numbers were
18 reworked," what do you mean?

19 A. My understanding was that when people
20 looked at the numbers to try to meet this criteria, the
21 amount of money available to the borrower would have
22 changed. The borrower was not happy with that. The
23 borrower asked us to reconsider. And that led to another
24 look at the calculation of these sorts of numbers
25 (indicating) to see if indeed through that recalculation

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1 that 10% break-even rate was in place.

2 461 Q. Okay. And did you learn that that
3 process, that did, in fact, occur, what you just described?

4 A. That it worked?

5 462 Q. That it occurred?

6 A. Sorry. You're losing me again.

7 463 Q. Okay.

8 A. What occurred? I just told you we...

9 464 Q. The borrower was unhappy. The borrower
10 asked you to reconsider.

11 THE DEPONENT: Can we take a break?

12 MR. DAVIS: Yeah. Why don't we take a break.

13 It's about lunchtime. Want to take a break for lunch?

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14 MR. SCHER: We're not going to take a break
15 for lunch while there's a question outstanding. And you
16 know that.

17 MR. DAVIS: There wasn't a question
18 outstanding. He just said he didn't understand what you
19 just said.

20 BY MR. SCHER:

21 465 Q. Okay. Let me explain.

22 You said your understanding was that when
23 people looked at the numbers to try to meet the criteria,
24 that the amount of the money available to be borrowed would
25 have changed, right?

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1 A. Yes.

2 466 Q. And it would have changed downward,
3 right?

4 A. I didn't say it would change downward,
5 it changed --

6 467 Q. Well, would it have changed downward or
7 would it have changed upward?

8 A. I don't know.

9 468 Q. Okay. But they didn't like the change?

10 A. Yeah.

11 469 Q. You don't know whether it was down or
12 up, right?

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13 A. I assume if they didn't like it it must

14 have been downward.

15 470 Q. That's what I assumed as well but I
16 guess I didn't want to reach for that. So let's just say
17 the number reached downward, right?

18 MR. DAVIS: Objection.

19 MR. SCHER:

20 471 Q. Am I right?

21 MR. DAVIS: Objection.

22 THE DEPONENT: I respond that the borrower
23 was not happy with the number.

24 BY MR. SCHER:

25 472 Q. Okay.

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1 A. And I assumed that it had gone down but
2 I was not party to conversations of it being downward or
3 upward or sideways.

4 473 Q. Right.

5 A. So --

6 474 Q. Anyway, it wasn't sideways because it
7 changed, right?

8 MR. DAVIS: Objection.

9 MR. SCHER: What's the basis of that
10 objection?

11 MR. DAVIS: I think that's an improper

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12 question.

13 MR. SCHER: Okay. That's fine.

14 475 Q. Go ahead. You know the number changed,
15 right, so it didn't go sideways, did it?

16 MR. DAVIS: Objection.

17 THE DEPONENT: What number changed?

18 BY MR. SCHER:

19 476 Q. Oh, what number? What number are we
20 talking about?

21 A. That's what I'm asking you.

22 477 Q. So you don't know what number we're
23 talking about. We've had this exchange for about five
24 minutes or so. And we talked about what number changed.
25 And you don't even know what number you're referring to in

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1 your answer.

2 MR. DAVIS: Objection.

3 BY MR. SCHER:

4 478 Q. Is that right?

5 MR. DAVIS: Objection.

6 BY MR. SCHER:

7 479 Q. I want to know if you're serious about
8 this.

9 MR. DAVIS: Objection. Please don't argue
10 with the witness. If you have a question to put to the

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11 witness, put the question to the witness.

12 BY MR. SCHER:

13 480 Q. Sir, are you serious when you say you
14 don't know what number we are talking about?

15 A. I am serious.

16 481 Q. Okay.

17 A. I do not know what number you're talking
18 about because there are two sets of numbers. In fact, there
19 may be three sets of numbers. There's the loan amount, and
20 then there's the rental stream required, and so on, so
21 forth.

22 So you keep talking about a number went down.
23 Well, if... which number are you talking about went down?
24 I'm saying I don't know which number you're talking about
25 went down. Was it the loan number went down? Was it a

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1 requirement of the NOI went down or the effect on the Debt
2 Service Coverage ratio went down?

3 Because we were talking all along about the
4 disbursement requirements. That's why I'm now confused when
5 you start saying some other numbers went down. Are you
6 talking about disbursement requirements went down or that
7 the loan number went down?

8 Pardon me. I'm frustrated.

9 MR. DAVIS: It's just about 1:00. Why don't

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10 we break there for lunch. This would be a good time.

11 MR. SCHER: Let's just finish this point.

12 Just a sec.

13 MR. DAVIS: All right. Give it five more
14 minutes. we'll break at noontime.

15 BY MR. SCHER:

16 482 Q. The amount of the money available to be
17 borrowed changed as a result of your interlineation.

18 MR. DAVIS: Objection.

19 BY MR. SCHER:

20 483 Q. Do you agree?

21 MR. DAVIS: Objection.

22 THE DEPONENT: I don't know. I don't know
23 what happened. I don't know what happened in that
24 conversation. I don't know if the amount went down or it
25 was some other requirement that changed.

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1 BY MR. SCHER:

2 484 Q. You reported to me earlier today,
3 perhaps three minutes ago, that the borrower was unhappy.

4 A. That is what I heard.

5 485 Q. And you don't know why the borrower was
6 unhappy; is that right?

7 A. No, I don't.

8 486 Q. What was reported to you with respect to

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9 why the borrower was unhappy, if you recall?

10 A. The borrower was unhappy because of
11 whatever result came out of asking for a 10% break-even
12 calculation to fit into the numbers internally, had some
13 effect on the borrower. That could have been a reduced loan
14 amount. It could have been a requirement for a higher
15 rental achievement or whatever. I don't know which number
16 was the effective number and what affected the borrower.
17 All I know is, the borrower did not like the response he got
18 coming out of this and asked us to reconsider.

19 487 Q. So is it your testimony now that it was
20 not the amount of the money available to the borrower that
21 was what the borrower was upset about?

22 MR. DAVIS: Objection.

23 THE DEPONENT: I said I didn't know which it
24 was.

25 BY MR. SCHER:

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1 488 Q. Okay.

2 A. I didn't...

3 489 Q. Other than the communication between the
4 field officer or the investment officer and the borrower on
5 the subject of this criteria, do you know of any other
6 communication with the borrower?

7 A. No.

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8 490 Q. And who reported this to you with
9 respect to the happiness or unhappiness of the borrower?

10 A. That would have been Tim Malik.

11 491 Q. Did you tell Mr. Malik to go to the
12 borrower and tell him about the new criteria that you had
13 interlineated?

14 MR. DAVIS: Objection. Asked and answered.

15 THE DEPONENT: I already answered that
16 question.

17 BY MR. SCHER:

18 492 Q. And?

19 MR. DAVIS: Asked and answered. Objection.

20 BY MR. SCHER:

21 493 Q. You can answer it again?

22 MR. DAVIS: Objection.

23 THE DEPONENT: I did not tell him.

24 BY MR. SCHER:

25 494 Q. Do you know why he did?

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1 MR. DAVIS: Objection. Calls for
2 speculation.

3 MR. SCHER: No.

4 495 Q. Do you know why he did?

5 A. why he did what?

6 496 Q. went to the borrower?

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7 A. I didn't know he went to the borrower.

8 497 Q. Okay.

9 A. So, if I don't know why he went to the
10 borrower, I don't know why he did.

11 498 Q. Okay. Do you know why the borrower was
12 contacted by a John Hancock representative?

13 A. As part of the normal process of things
14 you speak to the borrower as part of).

15 499 Q. Okay. And it's normal to tell the
16 borrower that criteria have changed, right?

17 MR. DAVIS: Objection.

18 THE DEPONENT: I can't -- don't know if
19 that's true or not.

20 BY MR. SCHER:

21 500 Q. Okay. So is it your testimony that it's
22 normal process of things you get to the -- you tell the
23 borrower but you don't know whether it's normal or not?

24 MR. DAVIS: Objection.

25 THE DEPONENT: Sorry. I don't understand the

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1 question.

2 BY MR. SCHER:

3 501 Q. Okay.

4 A. Maybe I can help you out here.

5 502 Q. Go ahead.

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6 A. The process is always one of
7 negotiation. I'm sure they applied for something under
8 certain terms and conditions. I'm sure somebody came back
9 to then and said, hey, what you exactly applied for we can't
10 deliver. And the borrower said, well, can you reconsider?
11 Is there some other way we can make this work? And that's
12 when they came back and we reconsidered.

13 503 Q. And reworked the numbers?

14 A. And reworked the numbers. Now, what I'm
15 saying is I was not party to any of those conversations so I
16 don't know what was said. I don't know why it was said or
17 in which manner it was said. But in general that's the kind
18 of thing that happens, and that's why I said that's kind of
19 normal. That's a dialogue that goes on.

20 504 Q. I see. And you don't know whether that
21 happened in this case or not?

22 A. I'm assuming it did because the request
23 came back to reconsider.

24 505 Q. Okay.

25 A. And I was told the borrower was not

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1 happy.

2 506 Q. And, in fact, the loan was reconsidered,
3 right?

4 A. Yes.

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5 507 Q. And the numbers were reworked, right?

6 MR. DAVIS: Objection.

7 THE DEPONENT: Right.

8 MR. DAVIS: You say "the numbers." You mean
9 what numbers?

10 BY MR. SCHER:

11 508 Q. The numbers that you referred to in your
12 answer.

13 MR. DAVIS: Objection. He's referred to a
14 lot of numbers. To which numbers are you referring?

15 BY MR. SCHER:

16 509 Q. Well, what numbers were you referring
17 to?

18 MR. DAVIS: No, the question is -- my
19 objection is, you're asking the numbers. If you could
20 clarify please what numbers you were referring to in your
21 question.

22 THE DEPONENT: How am I supposed to know?

23 BY MR. SCHER:

24 510 Q. Here's my question. Were numbers
25 reworked?

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1 MR. DAVIS: Objection.

2 THE DEPONENT: The income statement, the
3 internal income statement backing up the application, was

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4 reworked.

5 BY MR. SCHER:

6 511 Q. Okay. So those are the numbers that
7 were reworked. Is that right?

8 MR. DAVIS: Objection. Asked and answered.

9 THE DEPONENT: Didn't I just say that?

10 BY MR. SCHER:

11 512 Q. Yes. Just listen to my question. Just
12 listen to my question; answer my question, okay?

13 A. I'm trying to.

14 MR. DAVIS: He did.

15 THE DEPONENT: I'm trying to. But I have a
16 hard time understanding.

17 BY MR. SCHER:

18 513 Q. Let me ask you a second time. I'm
19 opaque, okay? I'm not as clever as you are, and so I'm
20 asking you these questions and I just want to make sure it's
21 clear to me. Please indulge me and answer my question.

22 Your attorney can object "asked and answered"
23 repeatedly; it's fine with me. It doesn't offend me. I'm
24 going to ask a question several times to make sure I have it
25 clear because I'm searching for the truth. Is that fair?

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1 MR. DAVIS: Objection. That's not what
2 you're doing.

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3 MR. SCHER: Okay.

4 MR. DAVIS: And you're not entitled to ask
5 him the same question over and over again in an attempt to
6 get a different answer that you would prefer over the one
7 that is truthful.

8 MR. SCHER: I'm very happy with the answers
9 Mr. Thomas is providing because they're truthful answers.
10 Right, Mr. Thomas? You've been truthful this morning,
11 haven't you?

12 MR. DAVIS: He's sworn to give truthful
13 testimony. You know that, Mr. Scher.

14 BY MR. SCHER:

15 514 Q. Your answers have been truthful this
16 morning, haven't they?

17 A. Yes, they have.

18 515 Q. To the best of your knowledge,
19 information and belief, right?

20 A. Yes, they have.

21 516 Q. Okay.

22 A. Why do you doubt me?

23 517 Q. I have no doubt whatsoever. I'm
24 absolutely confident that that's the case.

25 MR. DAVIS: All right. We're going to take a

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1 break for lunch now. We'll be back in an hour.

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2 MR. SCHER: I'm not prepared to take a lunch
3 break.

4 MR. DAVIS: well, it's a little past 12. We
5 are now going to take a lunch break, so... Unless you're
6 telling me you're done.

7 MR. SCHER: Oh, I'm far from done.

8 MR. DAVIS: Okay. Well, then we're going to
9 need to take a lunch break. When would you like to resume?

10 MR. SCHER: As soon as possible.

11 MR. DAVIS: Well, how much longer do you
12 have?

13 MR. SCHER: I have quite a bit. Quite a bit.

14 MR. DAVIS: That's fine. Well, can you give
15 me a better estimate than that?

16 MR. SCHER: No, I can't.

17 MR. DAVIS: Okay. Then we'll be back from
18 lunch in a reasonable time.

19 MR. SCHER: I'd appreciate it, if you could
20 do it in 45 minutes. I'd appreciate it.

21 MR. DAVIS: Okay. Well, we will certainly do
22 everything we can to be within a reasonable time. I can't
23 be any more specific than that.

24 MR. SCHER: Okay.

25 ---Upon recessing at 12:05 p.m.

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1

2

---Upon resuming at 12:55 p.m.

3

BY MR. SCHER:

4

518

Q. You said just before lunch that your

5

understanding was that the borrower asked you to reconsider,

6

not you personally, but to ask John Hancock to reconsider.

7

A. Mm-hm.

8

519

Q. And what was it that you understood you

9

were being asked to reconsider?

10

A. Well, reconsider whatever the changed

11

conditions were so that we could go back to the original

12

borrower application, the same terms and conditions that

13

were previously agreed to in principle by the various

14

parties.

15

520

Q. All right.

16

A. So that meant what we had to do was take

17

a look internally, look at our internal-generated numbers

18

for cash flows and all that sort of thing, and see whether

19

those numbers would still support that 10 percent break-even

20

condition I had put in the first approval. Basically, we

21

were just asked to reconsider: would we actually do the

22

deal that was first discussed?

23

521

Q. Okay. And as a result of the

24

reconsideration, do I understand that the process, the what

25

you described as the loan approval process, was restarted?

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1 A. Correct.

2 522 Q. And as a result of which there were
3 changes made to the loan approval process?

4 A. Well, to the information backing up the
5 loan approval, yeah.

6 523 Q. And the information backing up the loan
7 approval process are the numbers contained in the loan
8 approval document.

9 A. Mm-hm.

10 MR. DAVIS: You have verbalize your response.

11 THE DEPONENT: Sorry?

12 MR. DAVIS: You have to verbalize your
13 response so that she can put it down.

14 THE DEPONENT: Oh, sorry. Yes.

15 You can't put me down for nodding my head?

16 BY MR. SCHER:

17 524 Q. And the loan approval document to which
18 I'm making reference, the first version of it is Exhibit 5.

19 A. Okay.

20 525 Q. Is that right? Is that the loan
21 approval document?

22 A. Yes.

23 MR. DAVIS: The first version.

24 BY MR. SCHER:

25 526 Q. That's the first version of it?

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1 A. Yes.

2 527 Q. okay. Just so I know what we're talking
3 about.

4 There was no hedge instrument purchased for
5 this loan in particular, was there, at the time -- at the
6 rate lock?

7 A. I don't know.

8 528 Q. I'll show you what I've marked as Thomas
9 Exhibit 6, if you would just look it over for a moment, and
10 then I'd like to ask you some questions about it.

11 (witness perusing document)

12 ---EXHIBIT 6 marked for identification

13 BY MR. SCHER:

14 529 Q. It's Bates-stamped JH 131 and 132.

15 A. Mm-hm.

16 530 Q. Is that what you have before you, sir?

17 A. Yes.

18 531 Q. And you'll see it's an e-mail stream, is
19 what I always call it. I'm not sure that's the correct
20 description. But at the bottom half of the first page,
21 continuing on to the second page is, an e-mail from
22 Mr. Malik to you showing carbon copies to David Henderson
23 and Patricia Coyne. Have I accurately described that?

24 A. Yes.

25 532 Q. And do you recall receiving this e-mail

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1 on or about August 11,2004, from Mr. Malik?

2 A. No, I don't recall in the specific.

3 533 Q. Okay. The document itself contains
4 another e-mail from Mr. Malik to Mr. Ferrie. Do you recall
5 ever having seen that document, that part of it?

6 A. No.

7 534 Q. No. Mr. Malik states in his e-mail to
8 Mr. Ferrie:

9 "I guess I will try one more time the
10 bureaucratic approach. I'll let you know how
11 hard he laughs."

12 Now, do you have any idea to what Mr. Malik
13 is referring?

14 MR. DAVIS: Objection. You can respond.

15 MR. SCHER: What's the basis?

16 MR. DAVIS: You're calling for speculation.

17 MR. SCHER: No.

18 535 Q. Do you have --

19 MR. DAVIS: He said he hasn't seen it. But
20 go ahead.

21 BY MR. SCHER:

22 536 Q. Do you have any understanding as to what
23 Mr. Malik is referring?

24 A. I really don't but I would speculate --

25 MR. DAVIS: I caution you not to speculate.

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1 THE DEPONENT: Okay. I can't speculate. Can
2 I assume?

3 MR. DAVIS: No.

4 BY MR. SCHER:

5 537 Q. What's your reasoned estimate as to what
6 it is he is saying?

7 MR. DAVIS: Objection. He's already said he
8 doesn't want to speculate.

9 BY MR. SCHER:

10 538 Q. And what do you think Mr. Malik's
11 talking about here?

12 MR. DAVIS: Objection.

13 MR. SCHER: You can answer.

14 THE DEPONENT: Can I answer?

15 MR. DAVIS: Yeah, you can answer over my
16 objection.

17 THE DEPONENT: Okay. What I think he was
18 talking about is having to write it up again.

19 BY MR. SCHER:

20 539 Q. Okay. So the bureaucratic approach is
21 to write it up again.

22 A. And re-present it.

23 540 Q. Okay. And what about "laughing"? Why
24 does he think that you would laugh when you saw this?

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25 MR. DAVIS: Objection.

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1 BY MR. SCHER:

2 541 Q. No idea?

3 MR. DAVIS: Objection.

4 THE DEPONENT: Can I answer?

5 MR. DAVIS: Yes.

6 MR. SCHER: Yes.

7 THE DEPONENT: I have no idea.

8 BY MR. SCHER:

9 542 Q. Okay. Now, the part of the e-mail that
10 is directed to you appears to be a form of some kind with
11 approval provision at the bottom of it. You see what I'm
12 referring to?

13 A. Mm-hm. Yes.

14 543 Q. What is this form? Have you ever seen a
15 form like this before? Had you ever seen a form like this
16 before?

17 A. This -- well, this form would be a loan
18 modification request form, although it's not entitled that,
19 it is a form of that.

20 544 Q. Okay.

21 A. And representation of that.

22 545 Q. And what is being... what is being asked
23 to be modified?

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24 A. He's asking that the income statement
25 that we were using internally and had put in some reserves

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1 250 bucks a unit be reduced to \$150 a unit. Let's see what
2 else is he asking?

3 546 Q. Okay. Well, I guess what I was asking
4 was a more general -- a broader question and my question was
5 insufficiently clear.

6 So what he's asking for is that the approval,
7 which is Thomas Exhibit 5, be modified. Is that right?

8 A. Yes.

9 547 Q. In this loan approval modification form,
10 he makes reference or reference is made in the paragraph
11 before the end, the penultimate paragraph, where it begins
12 "in addition." Would you direct your attention to that?

13 A. Yes. Mm-hm.

14 548 Q. Can you tell me, is it fair to say that
15 the fact that "treasuries," meaning that the rate of
16 treasury notes has dropped 15 basis points since the August
17 2nd rate lock; is that what that's referring to?

18 MR. DAVIS: Objection.

19 THE DEPONENT: As I read it, it refers to a
20 rate lock. I don't know which date of rate lock that is.

21 BY MR. SCHER:

22 549 Q. Okay. All right. And he's making a

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23 reference and he suggests that the "Borrower could garner
24 today" a lower interest rate than he had secured from John
25 Hancock; is that right?

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1 MR. DAVIS: Objection.

2 THE DEPONENT: I think what he's saying is,
3 well, he's saying the interest based on... the spread has
4 widened because he... interest on the treasury has dropped.

5 ---Query by reporter.

6 THE DEPONENT: Sorry. I'll try again. I
7 didn't understand myself.

8 Since the rate lock, treasury had dropped.
9 So that meant that, given the same spread as we were
10 charging, that some other outside lender, other lender,
11 would take treasuries plus that spread and would end up
12 resulting in a lower rate for the borrower.

13 550 Q. I see. So is it fair to say that he's
14 referring to the risk that a competitor could secure this
15 borrower in the event the loan were not approved as it was
16 requested in this modification?

17 MR. DAVIS: Objection.

18 THE DEPONENT: I think what he's telling me
19 is that if the borrower decided not to go with the original
20 deal, he could probably find a better rate somewhere else.

21 BY MR. SCHER:

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22 551 Q. Okay. And isn't it, if the lender
23 doesn't go with the original deal, the borrower could go
24 elsewhere?

25 MR. DAVIS: Objection.

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1 BY MR. SCHER:

2 552 Q. Isn't that what he's saying?

3 MR. DAVIS: Objection.

4 THE DEPONENT: No. No, I don't... I wouldn't
5 put it that way. I think what he's saying is, remember
6 there's competitive pressures.

7 BY MR. SCHER:

8 553 Q. Okay.

9 A. So if we make things too difficult or
10 make the borrower too unhappy, he may go elsewhere.

11 554 Q. And Mr. Malik was asking for this loan
12 to be modified to avoid losing the borrower; is that right?

13 A. That's correct.

14 MR. DAVIS: Objection. When you say the loan
15 modified, do you mean the loan application or the --

16 BY MR. SCHER:

17 555 Q. This loan modification request. He was
18 making this loan modification request to avoid losing the
19 borrower. Right?

20 MR. DAVIS: Objection.

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21 THE DEPONENT: That's the way I'd understand
22 it.

23 BY MR. SCHER:

24 556 Q. Now, as far as you know, the projections
25 which are reflected in the loan application, Exhibit --

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1 sorry. We don't have a loan application yet. Well, let's
2 get one.

3 I'll show you what I've marked as Thomas
4 Exhibit 7.

5 ---EXHIBIT 7 marked for identification

6 BY MR. SCHER:

7 557 Q. That's a copy of the loan application.
8 It's dated July 30 on the front page, and then there's
9 handwriting on that front page which says something "8/23."
10 August 23rd. And it is -- and it has been countersigned by
11 Mr. Malik.

12 Have you reviewed this loan application?

13 A. No, I have not.

14 558 Q. The loan application having been signed
15 by Mr. Malik, which you can verify if you choose to on page
16 JH 354, is dated August 17, 2004. Do you have any reason to
17 believe that the projections which are part of this loan
18 application were made to conform to the projections and
19 numbers contained in the loan approval?

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20 MR. DAVIS: Objection.

21 THE DEPONENT: I have no idea.

22 BY MR. SCHER:

23 559 Q. Is it your understanding that -- strike
24 that.

25 You don't have any reason to believe that the

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1 modification to the financial projections which Mr. Malik
2 undertook were shared with the borrower, do you?

3 A. I have no idea.

4 560 Q. Now, if you would turn to the page which
5 is Bates-stamped JH00357, you'll see, it's a continuation of
6 the Condition 49, rental achievement. And at the top it
7 says: "Page 3 of 18."

8 A. Mm-hm.

9 561 Q. And the last paragraph, in the middle of
10 the page, reads:

11 "The amount the Effective Gross Income and
12 the NOI will be determined by John Hancock
13 prior to closing based upon a review of the
14 Certified Rent Roll and current
15 operating statements submitted by Borrower to
16 John Hancock."

17 I left out "as defined below."

18 Have I accurately read that provision?

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19 A. I think so.

20 562 Q. And can you tell me what that means?

21 MR. DAVIS: Objection. You asking him to
22 interpret the contract?

23 BY MR. SCHER:

24 563 Q. Well, do you have an understanding what
25 that means?

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1 MR. DAVIS: Objection.

2 THE DEPONENT: My understanding would be what
3 it says:

4 "... the Effective Gross Income and the NOI
5 will be determined by John Hancock prior to
6 closing based upon a review of the Certified
7 Rent Roll (as defined below) and current
8 operating statements submitted by the
9 Borrower to John Hancock."

10 And I assume that relates into something else
11 within the document that would explain why that would take
12 place.

13 564 Q. Okay. And is it fair to say that the
14 amount of the borrowing would be dictated by the actual
15 operating statements submitted by the borrower at the time
16 of closing?

17 MR. DAVIS: Objection. Calls for a legal

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18 conclusion.

19 THE DEPONENT: I don't know if I can answer
20 that because I don't know this document inside and out.

21 BY MR. SCHER:

22 565 Q. Okay. If you look at Condition 49 it
23 describes the circumstances under which the maximum
24 permitted principal amount of the loan shall be funded.

25 A. Mm-hm.

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1 566 Q. And it sets forth the criteria for that
2 funding, including the Loan to Value and Debt Service
3 Coverage Ratios?

4 MR. DAVIS: You still on page 357?

5 MR. SCHER: 356 and 357. Condition 49 starts
6 on page 356, you'll see, and then it continues on to page
7 357.

8 567 Q. So my question is, am I right?

9 MR. DAVIS: Objection. Calls, I think, for a
10 legal conclusion. The document speaks for itself.

11 BY MR. SCHER:

12 568 Q. Can you answer my question, sir?

13 MR. DAVIS: Objection.

14 THE DEPONENT: Do I answer this question?

15 MR. DAVIS: Would you reread the question,
16 please?

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17 THE REPORTER: "Question: And it sets for
18 the criteria for that funding, including the Loan to Value
19 and Debt Service Coverage Ratios?" And it continues,

20 "So my question is, am I right?"

21 MR. DAVIS: And you got my objections noted?

22 THE REPORTER: I didn't read the whole
23 passage. I've got your objections.

24 THE DEPONENT: I don't know if you're right
25 or not, to tell you the truth. I mean, all I know is it

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1 says... (reading)

2 ---Query by reporter

3 MR. DAVIS: I was having trouble following
4 that one too.

5 THE DEPONENT: Sorry, I'm just trying to help
6 you guys get out of here.

7 MR. DAVIS: No problem.

8 THE DEPONENT: Can you repeat the original
9 question again, because I've lost my train of thought.

10 THE REPORTER: "Question: If you look at
11 Condition 49, it describes the circumstances under which the
12 maximum permitted principal amount of the loan shall be
13 funded.

14 "Answer: Mm-hm.

15 "Question: And it sets forth the criteria

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16 for that funding, including the Loan to Value and Debt
17 Service Coverage Ratios? Am I right?"

18 THE DEPONENT: Okay, my answer was, yeah,
19 you're right. I don't know if it sets forth the criteria as
20 you outlined it for funding the loan.

21 Sorry (to reporter), I gave you the wrong
22 answer. I do not know if he's right that it sets forth the
23 criteria.

24 BY MR. SCHER:

25 569 Q. I show you what I've marked as Thomas

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1 Exhibit 8.

2 ---EXHIBIT 8 marked for identification

3 BY MR. SCHER:

4 570 Q. It's a document that's Bates-stamped JH
5 127 and 128. You have that before you, sir?

6 A. Yes, I do.

7 571 Q. And if you compare that with Thomas
8 Exhibit 6, I think you'll see that this document was
9 prepared after -- I mean, sorry, the document, Exhibit 8,
10 was prepared before Exhibit 6, and it's in the reverse
11 chronological order. And what I'm referring specifically to
12 is the loan modification request portion.

13 MR. DAVIS: You say 8 was prepared before 6?

14 MR. SCHER: Yes. 8... sorry.

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15 572 Q. No, no, no. I'm sorry. I'm wrong.

16 I've given it to you in the right order.

17 okay. Let's start again.

18 Exhibit 8 is a copy of the loan modification

19 request dated Thursday, August 12, 2004, at 8:52 a.m. and

20 Exhibit 6 is an e-mail transmitted to you on August 11,

21 2004, at 7:32 p.m. Do you see that?

22 A. Mm-hm. Yes.

23 573 Q. Do you know what precipitated the

24 resubmission of the loan application -- of this loan

25 modification request? No?

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1 A. No.

2 574 Q. Okay. Did you discuss with anyone the
3 reduction in the reserve level for the apartment units?

4 A. I discussed it with Tim Malik.

5 575 Q. You did. And did you include -- did you
6 discuss wit him after you received his first loan
7 modification request?

8 A. I wouldn't know the timing. I can't
9 remember the timing. Could have been before, during, and
10 after.

11 576 Q. In the first version, Thomas Exhibit 6,
12 the first paragraph indicates that the reserves in the
13 executed approval are at \$250 a unit and requests that the

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14 reserves in the approval be reduced to \$150 a unit.

15 Do you know why that reference was not
16 contained in Thomas Exhibit 8, the second version of the
17 loan request?

18 A. I'm just reading... (perusing document).

19 577 Q. Sure.

20 A. The answer is no, I don't know.

21 578 Q. Okay. You see in the... sorry...

22 You see in Exhibit 8 there's an e-mail from
23 Mr. Ferrie to Mr. Malik regarding the Cary, Kramer firm, and
24 it makes reference to the fact that:

25 "They are former Manu Life correspondents and

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1 supposedly Ivor thinks very highly of Don
2 Pettit."

3 Do you know, is that the case?

4 A. That I think highly of Don Pettit?

5 579 Q. Right?

6 A. Yes, I do.

7 580 Q. And were they, in fact, former Manulife
8 correspondents?

9 A. Yes, they were.

10 581 Q. I'll show you what I have marked as
11 Thomas Exhibit 9.

12 ---EXHIBIT 9 marked for identification

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13 BY MR. SCHER:

14 582 Q. which is a document Bates-stamped JH
15 1175. You have that before you, sir?

16 A. Yes.

17 583 Q. And that's an e-mail from Mr. Malik to
18 Mr. Henderson with a copy to you. And this appears to have
19 been sent to you at the end of the day in which Exhibit 8
20 was sent to you. It's 5:32 p.m., and the Exhibit 8 is sent
21 to you at 8:52 a.m. Do you see that?

22 A. Mm-hm.

23 584 Q. Do you recall discussing with Mr. Malik
24 the content of this e-mail?

25 A. I don't recall, no.

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1 585 Q. Do you recall discussing with him how to
2 make the numbers work in general?

3 A. Yes, I did have discussions with him on
4 that.

5 586 Q. And do you recall discussing with him
6 that by changing the reserves and changing -- do you recall
7 discussing with him changing the reserves?

8 A. Yes.

9 587 Q. Do you recall discussing with him
10 changing the expenses per unit?

11 A. Yes.

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12 588 Q. Do you recall discussing with him that
13 this information should be shared with the prospective
14 borrower?

15 A. No.

16 589 Q. Do you recall telling him that he should
17 not share this information with the prospective borrower?

18 A. No.

19 590 Q. Is it the practice of John
20 Hancock/Manulife not to share changes in the reserves and
21 operating expenses of property with the prospective
22 borrower?

23 MR. DAVIS: Objection. Misstates.

24 THE DEPONENT: No, we don't share that.

25 These are our own calculations based on our own market

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1 information and on the information already provided to us by
2 the borrower. The numbers can change dramatically,
3 depending on our own view of the world. No, we don't, as a
4 matter of course, share them back and forth.

5 BY MR. SCHER:

6 591 Q. In Thomas Exhibit 9, the last sentence
7 says:

8 "I look forward to your advice on what to do
9 about solving the 10% constant problem
10 without losing the deal."

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11 Did you understand that the deal was at risk?

12 A. Yes.

13 592 Q. And is it fair to say that what you
14 decided to do to avoid losing the deal was not to tell the
15 borrower anything?

16 MR. DAVIS: Objection.

17 THE DEPONENT: No, that's not fair to say.

18 BY MR. SCHER:

19 593 Q. No?

20 A. No.

21 594 Q. What did you tell the borrower?

22 A. I didn't tell the borrower anything.

23 595 Q. Did you tell anyone to tell the borrower
24 anything?

25 A. No, I did not.

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1 596 Q. Do you know whether the borrower was
2 told anything?

3 A. I don't know.

4 MR. DAVIS: Other than the loan was approved?

5 MR. SCHER: Your deposition is coming up so
6 we don't need you to testify right now.

7 597 Q. Did you discuss with Mr. Malik,
8 Mr. Margolis, Mr. Ferrie, or anyone at John Hancock that a
9 modification to the loan application ought to be prepared to

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10 reflect the changes in the numbers and the changes in the
11 criteria?

12 MR. DAVIS: Objection. Mr. Margolis is an
13 attorney, to the extent you had any discussions with
14 Mr. Margolis on that topic, then you should exclude that
15 response, that information from your response.

16 THE DEPONENT: I do recall there were
17 discussions with Tim Malik that if we were going to be doing
18 anything different than what had been originally approved by
19 Mr. Thomson that we'd have to re-present.

20 BY MR. SCHER:

21 598 Q. Now, you said Mr. Thomson.

22 A. Mm-hm.

23 599 Q. What is Mr. Thomson?

24 A. Well, Exhibit 5, the loan transaction
25 was approved by Warren Thomson.

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1 600 Q. Forgive me?

2 A. On August the 10th.

3 601 Q. I see.

4 A. So if there was going to be anything
5 different to this, it had to go back to Mr. Thomson.

6 602 Q. Okay. So you did tell him that if there
7 were going to be changes with respect to the reserve amount
8 or with respect to the operating expenses, or with respect

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9 to the inclusion of new criteria, that would have to go back
10 to Mr. Thomson, the person who's superior to you?

11 A. That's correct.

12 603 Q. But you didn't tell Mr. Malik or anyone
13 else that if there were changes made in those criteria, in
14 the criteria, in the operating expenses, or in the reserves,
15 that those changes would have to go back to the prospective
16 borrower?

17 MR. DAVIS: Objection.

18 BY MR. SCHER:

19 604 Q. Am I right about that?

20 MR. DAVIS: Objection.

21 BY MR. SCHER:

22 605 Q. Subject to your attorney-client
23 privilege.

24 A. You're right about that.

25 MR. DAVIS: (overspeaking) And the prior

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1 objection as well.

2 BY MR. SCHER:

3 606 Q. Now, the modification to the loan
4 application form, do you have any information, subject to
5 your not reporting to me attorney-client-privileged
6 communications, do you have any information about the
7 preparation of an amendment to the Vesterra loan

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8 application.

9 A. I don't know what you're talking about.

10 607 Q. Okay. I think the answer, is you have
11 no information, then. Is that right?

12 A. I don't know what amendment you're
13 talking about, sir.

14 608 Q. Okay. You don't know even of the
15 existence of a draft amendment to the Vesterra loan
16 application?

17 A. What amendment are you talking about?

18 609 Q. To Vesterra. An application in the
19 form --

20 A. The document that went --

21 610 Q. Yes?

22 A. -- to Vesterra?

23 611 Q. Yes.

24 A. Changing...

25 612 Q. Terms and conditions?

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1 A. I'm not aware.

2 613 Q. Not aware. Do you recall learning that
3 the changes contemplated that you said had to go to
4 Mr. Thomson would have killed the deal had they been
5 submitted to the borrower?

6 MR. DAVIS: Objection. I think that

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7 misstates the evidence.

8 THE DEPONENT: You lost me again.

9 BY MR. SCHER:

10 614 Q. Let me start... One, you told Mr. Malik
11 that if there were to be changes in the reserves, changes in
12 the operating expenses, inclusion of new criteria, that
13 needed to be approved anew by Mr. Thomson, am I right about
14 this?

15 MR. DAVIS: Objection. You can respond.

16 THE DEPONENT: To go back a bit, the original
17 approval, and however it was transmitted to borrower,
18 resulted in the borrower saying he was not happy with the
19 deal, and would we reconsider providing the loan on the
20 basis originally contemplated. What I told Mr. Malik was
21 that if we were going to do that that would necessitate
22 rewriting the numbers that we use in our own analysis to
23 prove that the loan worked according to our criteria.

24 If he could do that, then it had to be
25 written up in a format that had to be approved by

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1 Mr. Thomson because we wanted the loan.

2 BY MR. SCHER:

3 615 Q. Okay. So when you say that "the
4 borrower was not happy," is that the rough equivalent to a
5 deal-killer?

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6 MR. DAVIS: Objection.

7 THE DEPONENT: That would be an assumption.

8 The borrower's not happy. But I've had unhappy borrowers go
9 ahead with the deal because it was in their best interests.

10 BY MR. SCHER:

11 616 Q. I guess what I'm asking you, and I
12 should know, did you hear the phrase "deal-killer" applied
13 to the borrower's state of mind or the borrower's expressed
14 view?

15 MR. DAVIS: Objection.

16 THE DEPONENT: Mm, I don't believe so.

17 BY MR. SCHER:

18 617 Q. Is it accurate to say that if the deal
19 is changed and it's not approved by the borrower, the
20 money's refunded? The fees are refunded?

21 A. Yes.

22 618 Q. Some of the fees. Maybe not the 5
23 grand.

24 619 Q. I understand that. Yeah. The
25 application fee, the \$5,000 application fee, would not be

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1 refunded but the 320 and the 640 would be?

2 A. Mm-hm.

3 620 Q. Is that right?

4 A. Correct.

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5 621 Q. Was the... the next document is Thomas
6 Exhibit 10.

7 ---EXHIBIT 10 marked for identification

8 BY MR. SCHER:

9 622 Q. And that is a document that's
10 Bates-stamped JH 00405 and concludes at JH 425. Do you see
11 that?

12 A. Mm-hm. Yes.

13 623 Q. And it is similar to Thomas Exhibit 5
14 except, among others, it doesn't have the interlineation of
15 NCF and 10% break-even. Instead those are typewritten in,
16 you see that, in the disbursement requirements?

17 MR. DAVIS: Objection.

18 THE DEPONENT: This on page 405?

19 BY MR. SCHER:

20 624 Q. Yes. In the disbursement requirements
21 it says:

22 "At a minimum NCF" -- in part -- "at a
23 minimum, NCF Debt Service Coverage Ratio..."

24 THE DEPONENT: Right.

25 BY MR. SCHER:

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1 625 Q.

2 "... and a 10% break-even..."

3 MR. DAVIS: "According to the underwriting

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4 herein."

5 MR. SCHER:

6 626 Q. I'm sorry.

7 "... according to the underwriting herein."

8 A. Okay.

9 627 Q. And there are some other differences in
10 Exhibit 10. Is this the final loan approval?

11 A. To my knowledge, it is.

12 628 Q. It appears to have been signed by you on
13 August 16, 2004?

14 A. Correct.

15 629 Q. As I understand it from your earlier
16 testimony the credit approval had already occurred. Am I
17 right about that?

18 A. It had occurred with Exhibit 5.

19 630 Q. It had even occurred back then; right?

20 A. Correct. With... (indicating) it's not
21 exactly the same.

22 631 Q. Right. Okay. So that the credit
23 approval would be modified to reflect the change from --

24 A. A credit had been approved.

25 632 Q. Okay. A credit. The final credit --

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1 A. The final credit for this transaction is
2 Exhibit 10, as far as we know.

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3 633 Q. And it had been approved as of -- and
4 the credit had been approved prior to the approval of the
5 loan. Right?

6 A. No. The loan... okay, let's get the
7 definitions correct. The loan slash credit, which I'm
8 calling the same thing, were approved, originally approved,
9 on this August 10th date.

10 Subsequently, based on conversations various
11 people had with the borrower in our attempt to satisfy the
12 borrower's request for the loan that he really wanted, it
13 was resubmitted and approved again on... approved with
14 slightly different numbers or whatever you want to call it,
15 same loan amount, on the 16th.

16 634 Q. Let me show you what's been marked as
17 Thomas Exhibit 11, which is a document that's Bates-stamped
18 JH 1176.

19 ---EXHIBIT 11 marked for identification

20 ---OFF THE RECORD DISCUSSION

21 BY MR. SCHER:

22 635 Q. Now, Thomas Exhibit 11 is the third
23 version of the loan modification approval form. Am I right
24 about that?

25 MR. DAVIS: I'm sorry, I thought you said it

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1 was the third version?

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2 MR. SCHER: Yes.

3 THE DEPONENT: I don't know which version it
4 is.

5 BY MR. SCHER:

6 636 Q. Well... yes. Okay. In this version...
7 the first question is, was it necessary that the loan
8 application modification, loan approval modification, form
9 be completed as well as the loan approval form, Thomas
10 Exhibit 10?

11 A. No, it was not necessary.

12 637 Q. Okay.

13 A. What was necessary is that the right
14 people had approved it.

15 638 Q. Okay. And Thomas Exhibit 11 didn't have
16 the right people approving it but Thomas Exhibit 10 did?

17 A. Yes.

18 639 Q. Now, Thomas Exhibit 11 makes reference
19 to the fact that the basis point have now dropped 19 points
20 since the date of the rate lock.

21 A. Mm-hm.

22 640 Q. You see that?

23 A. Yes.

24 641 Q. That's just making the same point again,
25 right?

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1 MR. DAVIS: Objection.

2 BY MR. SCHER:

3 642 Q. The same point that you made reference
4 to in your earlier testimony?

5 MR. DAVIS: Objection.

6 THE DEPONENT: The point earlier was that
7 treasuries had dropped 19 bps.

8 643 Q. Well, the point earlier was that they
9 had dropped 15 bps, actually.

10 A. Well, it's 15 before and now...

11 644 Q. Now it's 19.

12 A. A few days later it's dropped 19, mm-hm.

13 645 Q. So that again the borrower would have
14 been able to presumably get the same spread, gone out and
15 got a more favourable rate.

16 A. That's correct.

17 646 Q. Now, in Exhibit 10, in that paragraph
18 that says: "Disbursement requirements," that is describing
19 in part what will be required at the time of the closing and
20 disbursement of the loan; is that right?

21 MR. DAVIS: Objection.

22 THE DEPONENT: I think it's describing the
23 rents of \$4.2 million, et cetera, et cetera, et cetera, and
24 other income, so much is required.

25 BY MR. SCHER:

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1 647 Q. At the time of the disbursement, right?

2 MR. DAVIS: Objection.

3 BY MR. SCHER:

4 648 Q. Isn't --

5 THE DEPONENT: No, it means we have to be
6 comfortable that that is possible before we can disburse the
7 funds.

8 BY MR. SCHER:

9 649 Q. Okay. So it says that --

10 A. But this, of course, does not govern the
11 arrangement with the borrower. This is the internal
12 document, right? Are you saying this governs the
13 relationship with the borrower?

14 650 Q. No, I'm just saying this governs the
15 requirements for disbursement.

16 A. But requirements for disbursement are in
17 the relationship with the borrower.

18 651 Q. Okay?

19 A. And this is an internal document.

20 652 Q. And this is different than the
21 relationship with the borrower, or not?

22 A. Well, I'm assuming that the commitment
23 letter would outline -- signed by the borrower, would relate
24 and outline all the conditions for disbursement. Those
25 would be the conditions that would rule, not what is in this

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1 internal document.

2 653 Q. So what Mr. Thomas approved and what you
3 approved is irrelevant to what the conditions and the
4 requirements of disbursement are; is that right?

5 MR. DAVIS: Objection.

6 THE DEPONENT: Not irrelevant, but if you're
7 asking can a commitment letter not reflect what has been
8 approved, it can.

9 BY MR. SCHER:

10 654 Q. And so it's your testimony that
11 notwithstanding the fact that you had to go back to
12 Mr. Thomas --

13 A. I'm Mr. Thomas.

14 655 Q. Thomson, sorry. You had to go back to
15 Mr. Thomas and to Mr. Thomson to get approval to the
16 modification to reduce the reserves and modify the expenses
17 and add the condition, that all of those changes were
18 immaterial to the amount that would be disbursed at the time
19 of the closing?

20 A. No, I didn't say it would be immaterial.
21 What I'm saying is, I'm just pointing out that sometimes
22 mistakes are made. You could have certain conditions
23 internally approved, but they might not show up in the
24 commitment letter. Whatever the commitment letter says in
25 any loan documents that both parties have signed, that is

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1 what we live up to and that's what we expect the borrower to
2 live up to.

3 656 Q. And those loan documents are the notes
4 and the mortgage, right?

5 MR. DAVIS: Objection.

6 THE DEPONENT: The note and the mortgage and
7 the commitment letter.

8 BY MR. SCHER:

9 657 Q. The note, the mortgage, the commitment
10 letter and all that. Is that right?

11 A. Yes.

12 658 Q. And the note and the mortgage would be
13 prepared would be prepared based on the conditions set forth
14 in the disbursement requirements?

15 MR. DAVIS: Objection.

16 THE DEPONENT: No, they would be prepared
17 upon the commitment letter.

18 BY MR. SCHER:

19 659 Q. Okay. So you're saying that after the
20 loan's originated and after the credit department has
21 approved, based on these disbursement requirements, that, in
22 fact, they are immaterial to the arrangement and all that
23 matters is what's in the commitment letter?

24 A. That's what I'm saying.

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25 660

Q. Okay.

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1 MR. DAVIS: Pause for a second.

2 ---OFF THE RECORD DISCUSSION.

3 BY MR. SCHER:

4 661 Q. I'll show you what's been marked as

5 Thomas Exhibit 12.

6 ---EXHIBIT 12 marked for identification

7 BY MR. SCHER:

8 662 Q. And that's a document that's

9 Bates-stamped JH 1174. Do you have that in front of you,
10 sir?

11 A. Yes, I do.

12 663 Q. And this is the e-mail or the memorandum
13 from Patricia Coyne, the credit person, right?

14 A. Yes.

15 664 Q. And she's sending it to Timothy Malik,
16 right?

17 A. Yes.

18 665 Q. And this is the credit approval, am I
19 right?

20 MR. DAVIS: Objection. He gave testimony to
21 the contrary. Go ahead.

22 THE DEPONENT: This is a memorandum advising
23 whoever it's addressed to that the credit has been approved.

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24 BY MR. SCHER:

25 666 Q. okay. And a copy of it is sent to

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1 Arthur Francis, who is head of closing, head of the closing
2 department, right?

3 A. Correct.

4 667 Q. And it's giving him the instructions as
5 to what to do, right?

6 MR. DAVIS: Objection.

7 THE DEPONENT: No, I don't think it is.

8 BY MR. SCHER:

9 668 Q. Well, why is it sent to Mr. Francis? Do
10 you have any idea?

11 A. Well, he's head of the closing
12 department. He has to schedule closings. He has to know
13 what manpower he needs, people-power, I'm sorry, in order to
14 get it in the right -- people to handle the transaction in a
15 timely fashion. I guess it's a head-up.

16 669 Q. So can you tell me why the disbursement
17 requirements are included in this memorandum from Patricia
18 Coyne?

19 MR. DAVIS: Objection. Caution not to
20 speculate.

21 THE DEPONENT: The approval letter basically
22 sets out, regurgitates, all the basic conditions of the

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23 credit approval.

24 BY MR. SCHER:

25 670 Q. Okay. And this --

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1 A. And it's to remind people that, you
2 know, if they had any ideas otherwise one way or the other,
3 these are the terms.

4 671 Q. Okay. And this --

5 A. And that's in the event of sometimes
6 other things are added or deleted just for, hopefully,
7 clarity purpose.

8 672 Q. And the "this" that you're making
9 reference to, for the purpose of the record is Thomas
10 Exhibit 12?

11 A. Yes. Exhibit 10 supercedes Exhibit 12.
12 Overrules it.

13 673 Q. Okay. So Exhibit 12 --

14 A. Sorry, by that I mean Patricia Coyne
15 cannot now turn around and approve the loan on some
16 completely different basis, somebody can't say, well, that's
17 the way it was approved and run off with that. They have to
18 refer back to this.

19 674 Q. So Exhibit 10 -- so Exhibit 12 is, it
20 should be, an extraction from Exhibit 10.

21 A. Yes.

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22 MR. DAVIS: Objection. I don't think that's
23 what he said.
24 MR. SCHER: Okay, that's what he just said.
25 And Exhibit 12 --

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1 MR. DAVIS: Please, go ahead.
2 BY MR. SCHER:
3 675 Q. Sorry, do you want clarify something?
4 THE DEPONENT: Never mind.
5 MR. DAVIS: I really wish you would stop
6 misquoting him and . . .
7 THE DEPONENT: I don't have the same
8 advantage you do of having a laptop in front of me.
9 MR. DAVIS: The record will reflect what the
10 witness testified to and then what Mr. Scher regurgitated.
11 BY MR. SCHER:
12 676 Q. So you said that Patricia Coyne can't
13 approve something different than -- Patricia Coyne meaning
14 the Exhibit 12 -- can't be approving something different
15 than what's reflected in Exhibit 10. Isn't that right?
16 A. Yes.
17 677 Q. Okay. So Exhibit 12 is an extraction of
18 information from Exhibit 10?
19 MR. DAVIS: Objection.
20 BY MR. SCHER:

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21 678

Q. Right?

22

THE DEPONENT: Summary of.

23

BY MR. SCHER:

24 679

Q. Yeah. Okay.

25

So, and you say Patricia Coyne can't approve

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1 something different than what's contained in Exhibit 10,
2 right?

3

A. Correct.

4 680

Q. And Mr. Malik can't approve something
5 different than what's in Exhibit 10, can he?

6

A. No.

7 681

Q. Mr. Ferrie can't?

8

A. No.

9 682

Q. In fact, even you can't?

10

A. In this case, no.

11 683

Q. I'll show you what's marked as Thomas
12 Exhibit 13.

13

---EXHIBIT 13 marked for identification

14

BY MR. SCHER:

15 684

Q. It's a letter dated May 9, 2005, from
16 Jessica Yaffie Leveroni to a Leonard Shatz at First American
17 Title Insurance Company. And it's Bates-stamped JH 505
18 through 508. Have you that letter before you, sir?

19

A. Yes.

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20 685 Q. You've never seen this letter before,
21 have you?

22 A. I don't believe so.

23 686 Q. You know who Jessica Yaffie Leveroni is,
24 don't you?

25 A. No.

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1 687 Q. It says: "Assistant Vice President and
2 Counsel" of John Hancock. Do you know who she was when she
3 was employed at John Hancock?

4 A. No.

5 688 Q. Third paragraph reads:

6 "If Lender approves the Proposed Loan, it is
7 scheduled to close on or before August 1,
8 2005."

9 Is that an accurate statement of the
10 condition that existed as of May 9, 2005, that the lender
11 had not yet approved the proposed loan?

12 MR. DAVIS: Objection.

13 THE DEPONENT: Sorry, where do you get that
14 from?

15 BY MR. SCHER:

16 689 Q. Okay. The third paragraph says:

17 "If Lender approves the Proposed Loan..."

18 A. Right.

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19 690 Q. And it's making reference to this loan.
20 You can read the commitment number and so forth and so on.
21 But what I'm asking you: Is it accurate to say that the
22 proposed loan had not yet been approved as of May 9, 2005?
23 MR. DAVIS: Objection. You can respond.
24 THE DEPONENT: I would assume it's accurate
25 to say.

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1 BY MR. SCHER:
2 691 Q. Okay. And the basis of your assumption
3 is is that this letter would not be saying something
4 inaccurate or is there some other basis for it?
5 MR. DAVIS: Objection.
6 THE DEPONENT: well, the assumption is I've
7 not seen any prior approval. And where was this...
8 MR. DAVIS: No, the dates are --
9 BY MR. SCHER:
10 692 Q. That's okay. I'll take care of it.
11 MR. DAVIS: I knew you would.
12 THE DEPONENT: And the one above that is
13 dated July 30th. Another one....
14 BY MR. SCHER:
15 693 Q. I don't want to confuse you. This is
16 '05. This says May of '05?
17 A. Yeah.

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18 MR. DAVIS: Right. So this follows this.

19 THE DEPONENT: Oh. I see.

20 BY MR. SCHER:

21 694 Q. It's later in time. It's later in time
22 by eight months, nine months.

23 So I'm asking you, can you explain to me, can
24 you tell me whether or not the statement made in that
25 later-dated letter is accurate?

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1 MR. DAVIS: Objection. A letter he's never
2 seen. You can respond.

3 BY MR. SCHER:

4 695 Q. A letter you've never seen. Don't tell
5 me what the lawyer said to you. All of those conditions,
6 okay?

7 MR. DAVIS: Go ahead.

8 THE DEPONENT: The letter says if the lender
9 approves the proposed loan. I do not know what they mean by
10 "proposed loan."

11 BY MR. SCHER:

12 696 Q. Okay.

13 A. I do know that this other loan was
14 (indicating) approved and signed off before that date, so
15 where that comment comes from or the purpose of it, I don't
16 know. I didn't write the letter.

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17 697 Q. well, the proposed loan is defined above
18 and the loan is the loan reflected in the commitment, that
19 number is the number associated with the loan in question in
20 this case. There's only one.

21 So now I'm asking you, do you have any
22 understanding as to why Ms. Leveroni, counsel to John
23 Hancock financial services, do you have any idea as to why
24 she wrote:

25 "If the lender approves the proposing loan."

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1 MR. DAVIS: Objection. Asked and answered.

2 MR. SCHER: Right.

3 MR. DAVIS: Just a minute ago.

4 BY MR. SCHER:

5 698 Q. Okay. Go ahead?

6 THE DEPONENT: I have no idea.

7 BY MR. SCHER:

8 699 Q. Thank you.

9 THE DEPONENT: But since the loan was
10 approved, I'd have to assume that the "if" condition was
11 met.

12 BY MR. SCHER:

13 700 Q. I see?

14 A. But she's a lawyer. Don't ask me.

15 701 Q. Exactly. Mr. Malik had occasion to meet

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16 with the prospective borrower's representatives at the end
17 of May 2005. Do you have any knowledge regarding that
18 meeting or its results?

19 A. No.

20 702 Q. You testified very early today that you
21 understood that the borrower had decided to sell the
22 property. Other than what you reported to me earlier today
23 on that subject, do you have any information about that?

24 A. No.

25 MR. DAVIS: No. Objection. Other than what

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1 you've heard from counsel.

2 BY MR. SCHER:

3 703 Q. Oh, other than what you've heard from
4 counsel.

5 A. And I think earlier I'd said that -- I
6 had understood they'd sold the property.

7 704 Q. Right. That's right.

8 A. They had not decided to sell it. They
9 had sold the property.

10 705 Q. All right. I'd like to take a short
11 break.

12 ---Brief Recess

13 BY MR. SCHER:

14 706 Q. I'm looking at Exhibit 10, and I'd like

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15 you to as well, if you would.

16 A. Yeah.

17 707 Q. And the phrase "according to
18 underwriting herein," can you tell me what that phrase
19 means?

20 A. Well, I understood it to mean, and I
21 think it's meant to be read that way or understood that way,
22 to the whole package, whatever is written in the package.

23 708 Q. Is it your testimony that "underwriting
24 herein" does not mean the actual operating results at the
25 time of the loan closing and disbursement?

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1 MR. DAVIS: Objection.

2 THE DEPONENT: It's a hard question to answer
3 because I don't know, don't know the file well enough at
4 this point in time to know whether it talked about that or
5 not. What I was referring to, it refers to the numbers we
6 see here.

7 BY MR. SCHER:

8 709 Q. What page is that you're looking at,
9 that you're making reference to, just for the record?

10 A. There doesn't seem to be a -- oh, there
11 it is.

12 710 Q. The Bates stamp.

13 A. 408.

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14 711 Q. Okay.

15 A. Page 408 are our internal financial
16 statement...

17 712 Q. Yes?

18 A. ... numbers for what we thought the
19 property could produce. And it was based on these rents
20 being in place. And we assumed that those rents would be in
21 place and these numbers produce the break-even interest rate
22 of 10%.

23 713 Q. And when you say "in place," you mean --
24 do you mean actually achieved at the time of the closing and
25 disbursement?

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1 A. It's our belief that at the 80 percent
2 that these would be the numbers in place.

3 ---OFF THE RECORD DISCUSSION

4 714 Q. And when you say "the numbers that would
5 be in place," just the phrase "in place" is not familiar to
6 me. Do you mean the numbers that would actually have been
7 the results of organization operations of the apartment
8 unit?

9 MR. DAVIS: Objection.

10 THE DEPONENT: When we prepared this income
11 statement.

12 BY MR. SCHER:

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13 715 Q. Yes?

14 A. We understood in this case that this is
15 somewhat of a projection because the property hasn't been
16 constructed yet.

17 716 Q. It's as a forward commitment?

18 A. Right. So what we're saying is, to
19 ourselves, will this thing at the 80 percent level throw off
20 enough cash flow to meet our internal requirements. And
21 based on this underwriting, it throws off, for example,
22 break-even interest rate of 10.6 percent, Loan to Value in
23 the 67 percent range so it appeared to meet all our internal
24 standards. So on that basis, as underwritten herein, the
25 loan was approved.

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1 717 Q. Okay. But before closing and
2 disbursement would occur, there would be an accounting of
3 the actual income/expenses to determine the amount of the
4 loan and the disbursement of the loan, right?

5 MR. DAVIS: Objection.

6 THE DEPONENT: What did it say in the
7 commitment letter? I'd have to say I don't know. Show me
8 the commitment letter and I might be able to answer you.

9 BY MR. SCHER:

10 718 Q. Okay. So if the commitment letter said
11 that the loan would be determined based on the actual income

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12 and expenses that were achieved, then you would agree that
13 the underwriting herein refers ultimately to the actual
14 expenses and income?

15 MR. DAVIS: Objection. That's exactly
16 contrary to what he testified to. Please don't
17 mischaracterize the record in your questions.

18 MR. SCHER: Okay.

19 719 Q. Go ahead. You can answer my question.

20 A. You're getting me confused again.

21 720 Q. Well, don't be confused by your
22 counsel's trying to coach you. These are improper coaching
23 objections.

24 MR. DAVIS: I object to your attempt times to
25 mischaracterize the record.

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1 MR. SCHER: Don't interrupt me again.

2 MR. DAVIS: And your --

3 MR. SCHER: Don't interrupt me again.

4 MR. DAVIS: No. I'm entitled to make
5 objections, particularly to what I think are intentionally
6 devious questions.

7 MR. SCHER: Okay.

8 721 Q. Mr. Thomas, don't be confused. Here's
9 the question.

10 If the commitment letter said that the loan

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11 would be determined based on the actual results at the time
12 of the closing and disbursement, then would you agree that
13 "underwriting herein" is referring to that event?

14 MR. DAVIS: Objection. Calls for legal
15 conclusion.

16 THE DEPONENT: And there is a time difference
17 between closing, in this case, and disbursement.

18 BY MR. SCHER:

19 722 Q. What's that time difference?

20 A. Well, you asked me to respond if the
21 numbers are in place at closing and disbursement.

22 723 Q. Oh, okay.

23 A. There's two different time differences
24 so I wasn't sure what your -- what time point you're
25 referring to.

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1 724 Q. Closing.

2 MR. DAVIS: Objection. You can respond.

3 THE DEPONENT: What I'm trying to say is, we
4 would follow whatever it was written in the commitment
5 letter. We wanted to do this deal. We took the borrower's
6 request to heart to see if we could do the deal. We went
7 back. We got it reapproved on the basis that we believed
8 the borrower would accept, we believed the borrower accepted
9 those terms and conditions, and that's the basis on which we

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10 were prepared to operate.

11 I don't have a commitment letter in front of
12 me so I can't...

13 MR. DAVIS: Actually, it's Exhibit 7.

14 THE DEPONENT: Exhibit 7? Sorry. But I'm
15 going to have to read it through.

16 BY MR. SCHER:

17 725 Q. Okay. All right. I guess really what
18 I'm asking you, and I don't know why I'm having so much
19 trouble articulating it -- it must be my fault -- isn't it
20 accurate to say that if the result of the operations of this
21 apartment unit, the borrower, were a complete collapse?

22 A. Mm-hm.

23 726 Q. ... at the time of the closing or
24 disbursement, whichever, that you wouldn't make the loan?

25 MR. DAVIS: Objection. You can respond.

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1 THE DEPONENT: Depends, depends what the
2 commitment letter says.

3 BY MR. SCHER:

4 727 Q. Okay.

5 A. In that regard.

6 728 Q. So, if the commitment letter -- have
7 you --

8 A. The commitment letter said if the place

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9 were in full shambles and we were willing to advance it
10 anyway, we'd advance it anyway.

11 729 Q. Okay. But I'd point out to you in
12 Exhibit 7, at Condition 49, the rental achievement
13 requirement. Why don't you take a minute and review the
14 rental achievement requirement and tell me whether that
15 informs you as to whether or not the actual results, current
16 operating statements, would dictate.

17 A. Can you tell me what page that's on?

18 730 Q. Yeah, it's JH 357. That's the easiest
19 way. 356 is where Condition 49 begins.

20 MR. DAVIS: Objection. I think these
21 questions were asked and answers.

22 MR. SCHER: Right.

23 MR. DAVIS: You specifically pointed him to
24 this language before and asked him for his interpretation of
25 the contract.

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1 MR. SCHER: Right.

2 MR. DAVIS: And he specifically answered
3 that. Are you asking him to do that again?

4 MR. SCHER: Right. I'm not. But the record
5 reflects what I'm asking him, and I'm not going to restate
6 it for you.

7 MR. DAVIS: Would you reread the question,

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8 please.

9 THE REPORTER: "Question: But I'd point out
10 to you in Exhibit 7, at Condition 49, the rental achievement
11 requirement. why don't you take a minute and review the
12 rental achievement requirement and tell me whether that
13 informs you as to whether or not the actual results, current
14 operating statements, would dictate."

15 MR. DAVIS: It has been asked and answered,
16 in my objection.

17 THE DEPONENT: All right. Let me read all
18 this stuff and see if I can give --

19 BY MR. SCHER:

20 731 Q. Good.

21 A. -- some form of opinion on this.

22 (witness perusing document)

23 THE REPORTER: "Question: But I'd point out
24 to you in Exhibit 7, at Condition 49, the rental achievement
25 requirement. why don't you take a minute and review the

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1 rental achievement requirement and tell me whether that
2 informs you as to whether or not the actual results, current
3 operating statements, would dictate."

4 THE DEPONENT: So the question was whether --
5 if those were not there, whether...

6 732 Q. That's correct.

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7 A. whether Hancock had the obligation to
8 fund or not?

9 733 Q. Correct.

10 MR. DAVIS: Objection. Misstates.

11 THE DEPONENT: The only thing I can refer to
12 is, under 2, on page 357, the following conditions referred
13 to collectively as funding conditions. If all the funding
14 conditions are not satisfied --

15 734 Q. You have to keep your voice up. If the
16 reporter is going to transcribe it, you need to in a way
17 that she can transcribe it.

18 A. Section (2), 49(2) on page 357:
19 "Conditions to Funding and Provisions for Funding with
20 Rental Achievement Reserve."

21 The bottom of that paragraph:
22 "The foregoing conditions are referred to
23 collectively as the 'Funding Conditions.'
24 (space)If all of the Funding Conditions are
25 not satisfied, John Hancock shall have no

*** ROUGH DRAFT ***
Neeson & Associates, Toronto

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1 obligation to fund any portion of the Loan."

2 BY MR. SCHER:

3 735 Q. Okay.

4 A. That's it.

5 736 Q. Is that your answer?

06mr31-ROUGH DRAFT Thomas.txt

6 A. Yeah.

7 737 Q. Yeah. Now, you, that is, John

8 Hancock -- strike that.

9 Turning back to Exhibit 10, it mattered to
10 John Hancock that the document contained the phrase "10%
11 break-even according to underwriting herein." Am I right
12 about that?

13 MR. DAVIS: Objection. You can respond.

14 THE DEPONENT: I'm not clear what you mean by
15 "mattered."

16 738 Q. (overspeaking) You in fact insisted upon
17 it -- you were still speaking. I'm sorry.

18 A. Oh. Never mind. Okay, go on.

19 739 Q. It made a difference, and we know that,
20 because you interlineated on the original document this type
21 of document, inserting the 10% break-even. So we know that
22 it mattered to you that in this document, Exhibit 10, the
23 10% break-even, according to underwriting herein, be
24 included, right?

25 MR. DAVIS: Objection.

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1 THE DEPONENT: That it mattered?

2 BY MR. SCHER:

3 740 Q. Yes.

4 A. "Underwriting herein" just refers to

06mr31-ROUGH DRAFT Thomas.txt

5 this underwriting.

6 741 Q. I'm not asking you that. The 10%
7 break-even...

8 A. Yeah.

9 742 Q. ... that phrase, was included in this
10 document?

11 A. Right.

12 743 Q. Because you wrote it in in the earlier
13 version of it, right?

14 A. Yes.

15 744 Q. So it mattered to you that it be
16 included?

17 A. Yes.

18 745 Q. Am I right?

19 A. Yes.

20 746 Q. Okay. And you know that it mattered to
21 the borrower as to what the amount of the loan was, right?

22 A. Yes.

23 MR. DAVIS: Objection.

24 BY MR. SCHER:

25 747 Q. And you know that there is not in the

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1 commitment any reference whatsoever to the 10% break-even,
2 right?

3 A. To the extent I've read it I haven't

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4 seen it.

5 748 Q. Okay. And the reason it's not in the
6 commitment is because the borrower would not have agreed to
7 it. Am I right?

8 A. I have no idea whether they would have
9 or not have.

10 749 Q. Now, this disbursement requirement says
11 that the 75 percent Loan to Value and 1.25 to 1 debt service
12 commitment ratios are described in the commitment, right?
13 You see that?

14 A. Okay. Sorry, which document are you on?
15 10?

16 750 Q. 10.

17 A. Okay and this is described where?

18 751 Q. In the commitment. It's at disbursement
19 requirements?

20 A. Right.

21 752 Q. That same sentence we're looking at over
22 and over again.

23 A. Yeah, yeah, yeah.

24 753 Q. At the very end, it says:

25 "Subject to 75 percent Loan to Value and 1.25

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1 to 1?

2 A. Right.

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3 754 Q. "Debt Service Coverage Ratio as
4 described in the commitment."

5 Right?

6 A. Yeah.

7 755 Q. Those two criteria are described in the
8 commitment, right?

9 A. Well, I'm not -- well, we got the clause
10 right. It doesn't it I'm just clarifying whether he's
11 carving it off separate with the possibility of a rental
12 achievement reserve.

13 756 Q. A rental achievement reserve is included
14 in the loan commitment as well. But the 10 percent
15 break-even is in accordance with the underwriting in this
16 document, 10?

17 A. Mm-hm.

18 757 Q. Not in accordance with what's contained
19 in the commitment, right?

20 MR. DAVIS: Objection.

21 THE DEPONENT: It's not in the commitment.

22 MR. SCHER: I have nothing further.

23 MR. DAVIS: Okay.

24 EXAMINATION BY Mr. Davis

25 758 Q. Mr. Thomas, first, will be take a look

*** ROUGH DRAFT ***
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1 at Exhibit 7, which is the loan commitment that was signed

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2 by John Hancock and the borrower?

3 A. Yeah.

4 759 Q. You signed -- this document was signed
5 by Mr. Malik; correct? If you take a look at page 354?

6 MR. SCHER: I'll stipulate to that.

7 THE DEPONENT: That's correct.

8 BY MR. DAVIS:

9 760 Q. Okay. Mr. Malik, was he authorized to
10 sign this document on Hancock's behalf, to your knowledge?

11 A. Yes, he was.

12 761 Q. And by signing this document on
13 Hancock's behalf, was Hancock agreed to be bound by the
14 terms of the commitment as stated in the commitment?

15 MR. SCHER: Objection.

16 THE DEPONENT: Yes.

17 BY MR. DAVIS:

18 762 Q. Now, did Hancock change the terms of the
19 commitment, okay, the operative terms of the commitment at
20 any point in time before approving it?

21 MR. SCHER: Objection.

22 THE DEPONENT: Not to my knowledge.

23 BY MR. DAVIS:

24 763 Q. Now, you said that, I think you
25 testified earlier today that at some point in time between

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1 when the loan application was submitted by the borrower on
2 July 30th, 2004 and when it was finally approved by Han on
3 about August 16th or 17th of 2004, that you heard that the
4 borrower was unhappy about some possible change to the
5 commitment; is that right?

6 MR. SCHER: Objection.

7 THE DEPONENT: That's right.

8 BY MR. DAVIS:

9 764 Q. What did you understand to be the case
10 at the time?

11 MR. SCHER: Objection.

12 MR. DAVIS: What's the objection to that?

13 MR. SCHER: I have no idea what the case is
14 at the time. So it's a vague and indefinite. And that's
15 the basis. You can cure it.

16 BY MR. DAVIS:

17 765 Q. Go ahead and answer the question,
18 Mr. Thomas, if you can.

19 A. Can you ask the question again?

20 766 Q. Certainly. Making reference back to the
21 understanding that you had at the time that the borrower was
22 unhappy about some potential change to the terms...

23 A. Right.

24 767 Q. ... what did you understand to be the
25 case at that time?

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1 MR. SCHER: Objection.

2 THE DEPONENT: I understood that because the
3 way the transaction had been approved, with that 10 percent
4 break-even factor put in, that it had some effect on some
5 number that the borrower would have had to live with, and we
6 were told the borrower could not live with that, was unhappy
7 with that, and they wanted us to reconsider it on the
8 original basis as first proposed.

9 BY MR. DAVIS:

10 768 Q. Mm-hm. Did you reconsider it?

11 MR. SCHER: Objection.

12 THE DEPONENT: Yes, we did.

13 BY MR. DAVIS:

14 769 Q. And what decision was made as a result
15 of the reconsideration?

16 A. The decision was made to go ahead with
17 the loan.

18 770 Q. On what terms?

19 MR. SCHER: Objection.

20 THE DEPONENT: On the terms presented at the
21 10.

22 BY MR. SCHER:

23 771 Q. No, Exhibit 10 is what you're looking
24 for?

25 THE DEPONENT: On Exhibit 10.

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1 BY MR. DAVIS:

2 772 Q. And was Hancock willing to go forward
3 with the commitment on the terms that are contained in
4 Exhibit 7?

5 MR. SCHER: Objection.

6 THE DEPONENT: Yes, because it's signed by
7 Tim Malik.

8 BY MR. DAVIS:

9 773 Q. Now, I understand that there was some
10 change made in some of the financial assumptions, that
11 Hancock was using for purposes of approving the loan; is
12 that correct?

13 MR. SCHER: Objection.

14 THE DEPONENT: That's correct.

15 BY MR. DAVIS:

16 774 Q. Now, so how did you go about, how did
17 Hancock go about, dealing with this 10% break-even issue for
18 purposes of approving the loan as submitted by the borrower?

19 MR. SCHER: Objection.

20 THE DEPONENT: Essentially reduced the
21 expenses such that the NOI calculation divided by the loan
22 amount factored out a 10% rate given the interest rate.

23 BY MR. DAVIS:

24 775 Q. Now, so the 10% break-even, according to
25 the "underwriting herein" that Mr. Scher has been

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1 questioning you about in Exhibit 10, did that 10% break-even
2 impose any additional restrictions on the loan as approved
3 by Hancock?

4 MR. SCHER: Objection.

5 THE DEPONENT: Not to my knowledge, no. That
6 would not be our intent.

7 BY MR. DAVIS:

8 776 Q. Fine. Did it change any of the terms of
9 the loan commitment?

10 MR. SCHER: Objection.

11 THE DEPONENT: Not to my knowledge.

12 BY MR. DAVIS:

13 777 Q. And did it, for example, did the use of
14 the 10% break-even that's referenced in Exhibit 10, did it
15 affect the amount of the loan that the borrower would
16 receive under the terms of the loan commitment?

17 MR. SCHER: Objection.

18 THE DEPONENT: Not to my knowledge, no.

19 BY MR. DAVIS:

20 778 Q. Is it fair to say that the 10%
21 break-even was effectively assumed away for purposes of
22 approving this loan?

23 MR. SCHER: Objection.

24 THE DEPONENT: I believe so.

25 BY MR. DAVIS:

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1 779 Q. Then why was it, Mr. Thomas, that if
2 that was the case, John Hancock still made reference to the
3 10% break-even in the final approval form that's been marked
4 as Exhibit 10?

5 MR. SCHER: Objection.

6 THE DEPONENT: It was there to point tout the
7 readers and the approver that the numbers as now constituted
8 on, it's my understanding, anyway, on 408, when calculated
9 out, gave a 10% break-even interest rate.

10 BY MR. DAVIS:

11 780 Q. Were those the numbers that Hancock
12 would use for -- those are the numbers that Hancock used for
13 approving the loans; correct?

14 A. Right.

15 781 Q. Were those the same numbers that Hancock
16 would use for funding the loan?

17 A. The numbers we'd use for funding the
18 loan would be the numbers derived from the commitment
19 letter.

20 782 Q. But there was nothing about the 10%
21 break-even that would change the amount of funding, right?

22 MR. SCHER: Objection.

23 THE DEPONENT: It's not in the commitment
24 letter, no.

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25 BY MR. DAVIS:

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1 783 Q. Now, would Hancock rely upon the 10%
2 break-even to change the amount of funding if the 10%
3 break-even was not stated in the commitment letter?

4 THE DEPONENT: No.

5 MR. SCHER: Objection.

6 BY MR. DAVIS:

7 784 Q. And in changing some of the financial
8 assumptions that Hancock utilized for purposes of approving
9 the loan, is that unusual, in your experience?

10 A. No.

11 785 Q. Have you seen that done in other deals?

12 A. Do it all the time.

13 786 Q. Okay. why?

14 A. Because we want to do business. There
15 is always a first cut at it. Sometimes we come up with loan
16 amounts or whatever that the borrowers are unhappy with. We
17 look at market conditions. We try to see, is there some
18 way, something we missed? Is there some positive aspect
19 that we overlooked and we try to factor all those in. So
20 we can come up with a loan amount and terms and conditions
21 that the borrower would be happy with.

22 BY MR. DAVIS:

23 787 Q. Are all of John Hancock's or Manulife's

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24 underwriting guidelines stated in loan applications or loan
25 commitments?

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1 A. Not all stated in the commitments, they
2 are in the internal credit applications.

3 788 Q. But the underwriting guidelines that you
4 use and the various criteria, they're not all stated in the
5 loan commitments?

6 MR. SCHER: Objection.

7 THE DEPONENT: In the commitment?

8 BY MR. DAVIS:

9 789 Q. In the commitment.

10 A. No. No.

11 790 Q. Are there underwriting guidelines
12 besides Loan to Value?

13 A. There's debt service, there's
14 environmental, there's... building condition, occupancy
15 levels.

16 791 Q. After Hancock approved the loan
17 application as submitted by the borrower in August of 2004,
18 was Hancock ready, willing, and able to close this loan
19 according to the terms of that commitment?

20 MR. SCHER: Objection.

21 THE DEPONENT: Yes.

22 BY MR. DAVIS:

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23 792 Q. I have no further questions.

24 EXAMINATION BY Mr. Scher

25 BY MR. SCHER:

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1 793 Q. When you say that you frequently make
2 changes to the numbers that borrowers submit, tell me what
3 instances you can report when such changes were made?

4 A. We don't change the borrower's numbers,
5 we change our interpretation of the borrower's numbers.

6 794 Q. But you said you make changes that would
7 make the borrower happy.

8 A. Yeah.

9 MR. DAVIS: Objection. Can you read -- if
10 you want to read a portion of the transcript, then direct
11 his attention to it, please.

12 BY MR. SCHER:

13 795 Q. Okay. So you said:

14 "So you make changes so you can come up with
15 a loan amount in terms and conditions that
16 the borrower would be happy with."

17 Right?

18 A. Changes to our assumptions, changes to
19 our mathematical underwriting.

20 796 Q. Right?

21 A. Sure.

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22 797 Q. So if the borrower's happy with them,
23 then the borrower knows about them, right?

24 MR. DAVIS: Objection.

25 THE DEPONENT: No, not necessarily. In my

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1 experience all the borrower really cares about is, what is
2 the loan amount he's going to get.

3 MR. SCHER: Okay. That's all I have.

4 A. So...

5 798 Q. That's it?

6 MR. DAVIS: Are you done with your answer?

7 THE DEPONENT: So sometimes your analysis or
8 underwriting of the numbers may result in a loan amount less
9 than what the borrower wants, sometimes it could be a number
10 higher. Depends, and sometimes the borrower says, you know,
11 I can't live with that. Is there anything you can do?

12 And then you try to condition the loan in
13 such a way. You might take additional security. You might
14 reevaluate the numbers and say, oh, we made a mistake, we
15 took too high an allowance on this or that. You get to the
16 point where we are happy making the commitment.

17 BY MR. SCHER:

18 799 Q. Right.

19 MR. DAVIS: Do you have additional questions.

20 MR. SCHER: No.

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21 MR. DAVIS: Okay, I have a few more.

22 EXAMINATION BY

23 BY MR. DAVIS:

24 800 Q. Mr. Thomas, quickly, Mr. Scher asked you
25 earlier about whether you could approve something that was

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1 different than what was in the commitment, whether anyone
2 else, Mr. Malik or Ms. Coyne, could approve anything that
3 was different than what was in the commitment. Do you
4 remember those questions?

5 A. Yes.

6 801 Q. Right. To your knowledge, did anyone at
7 John Hancock approve this loan on terms that were different
8 than what are stated in the loan commitment?

9 THE DEPONENT: No, not to my knowledge, no.

10 MR. SCHER: Objection.

11 MR. DAVIS: No further questions.

12 ---On adjourning at 2:45 p.m.

13

14

15 REPORTED AND ROUGH DRAFT

16 PREPARED BY:

17 Karin Jenkner, C.R.R., R.P.R., C.S.R.

18

19

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO. 05-11614-WGY

JOHN HANCOCK LIFE INSURANCE
COMPANY,

Plaintiff/Counterclaim
Defendant

Vs.

VESTMONT LIMITED PARTNERSHIP,
VESTMONT LIMITED PARTNERSHIP II,
VESTMONT LIMITED PARTNERSHIP III,
and VESTERRA CORPORATION d/b/a
MONTGOMERY SQUARE PARTNERSHIP,
Defendants/Counterclaim
Plaintiffs

VOLUME: I
PAGES: 1-143

DEPOSITION OF JOAN M. UZDAVINIS
MARCH 21, 2006
REPORTERS, INC.
GENERAL & TECHNICAL COURT REPORTING
23 MERRYMOUNT ROAD, QUINCY, MA 02169
617.786.7783/Facsimile 617.786.7723

Page 3

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on behalf of the Defendants/

Counterclaim Plaintiffs

Page 2

1 DEPOSITION of JOAN M. UZDAVINIS, a witness
2 called on behalf of the Defendants/
3 Counterclaim Plaintiffs, pursuant to the
4 Federal Rules of Civil Procedure, before
5 Judith McGovern Williams, Certified
6 Shorthand Reporter, Registered
7 Professional Reporter, Certified Realtime
8 Reporter, Certified LiveNote Reporter, and
9 Notary Public in and for the Commonwealth
10 of Massachusetts, at the offices of
11 Deutsch, Williams, Brooks, DeRensis &
12 Holland, P.C., 99 Summer Street, Boston,
13 Massachusetts, on Tuesday, March 21, 2006,
14 commencing at 2:17 p.m.
15
16 APPEARANCES:
17 CHOATE, HALL & STEWART, L.L.P.
18 Paul D. Popeo, Esquire
19 Two International Place
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21 617-248-5000
22 ppopeo@choate.com
23 on behalf of the Plaintiff/
24 Counterclaim Defendant

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2			2	MR. SCHER: Administer the oath	
3	9 John Hancock Cash Balances -	129	3	to the witness, please.	
4	JHLICO, production numbers		4	- - -	
5	JH 01400 through 01404		5	JOAN M. UZDAVINIS, first having	
6			6	been duly sworn, testified as follows in	
7	10 John Hancock Cash Balances -	131	7	answer to direct examination by MR. SCHER:	
8	JHFS/JHRECO, production		8	- - -	
9	number JH 01405		9	Q. Good afternoon.	
10			10	A. Good afternoon.	
11	11 John Hancock Cash Balances -	131	11	Q. My name is Howard Scher. I represent	
12	JHLICO, production numbers		12	Vesterra and the other defendants in this	
13	JH 01406 through 01411		13	case. You are here as a 30(b)(6) designee	
14			14	on behalf of John Hancock; do you	
15	12 John Hancock Cash Balances -	132	15	understand that?	
16	JHLICO, production numbers		16	A. Yes, I do.	
17	JH 01412 through 01417		17	Q. Have you ever previously been deposed?	
18			18	A. No, I have not.	
19	13 John Hancock Cash Balances -	133	19	Q. I will ask you questions. Your responses	
20	JHVLICO & MIC (formerly		20	will be considered as answers. They will	
21	IPLICO), production numbers		21	be transcribed by the court reporter. Do	
22	JH 01418 and 01420		22	you understand that?	
23			23	A. Yes.	
24	14 Plaintiff John Hancock Life	135	24	Q. And if during the course of my questioning	

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1 you don't understand one of my questions
2 or don't understand something about it,
3 you are perfectly welcome to ask me to
4 clarify it, to restate it. Is that
5 agreeable?
6 A. Yes, it is.
7 Q. If during the course of the deposition you
8 need to take a break or choose to take a
9 break, I would ask you -- you certainly
10 are entitled to. Just indicate that to me
11 somehow. I just ask that if there is a
12 question pending, that you answer the
13 question, and then break. Will you agree
14 to that?
15 A. I will.
16 Q. What have you done to prepare for today's
17 deposition?
18 A. I have met with Mr. Popeo so I could know
19 what to expect today, and other than that,
20 my normal course of business.
21 Q. Okay. Did you do anything in particular
22 to prepare as a 30(b)(6) witness for John
23 Hancock in this case?
24 MR. POPEO: Objection.

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1 You may answer.
2 MR. SCHER: What is the basis?
3 MR. POPEO: Vague.
4 You may answer the question.
5 BY MR. SCHER:
6 Q. Did you do anything in particular to
7 prepare for your testimony as John
8 Hancock's 30(b)(6) designee?
9 A. The only thing I did is be certain that I
10 knew what it was I was a designee for and
11 I was the proper person to have access to
12 any information.
13 Q. And did you access information in
14 connection with your preparation for this
15 deposition today?
16 A. The only stuff that I looked at was
17 related to my regular business work. It
18 was similar matters to my day-to-day
19 activities.
20 Q. And what are those? What are they, the
21 matters that are similar to the things
22 that you do day to day?
23 A. I am in the -- in charge of the portfolio
24 management group, and we look at cash

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1 balances, the allocation of commitments,
2 and the general status of the general
3 funds of the U. S. mortgages.
4 Q. Did you look at the cash balances,
5 allocation of commitments, and the general
6 status of the general funds of the U. S.
7 mortgages to prepare for this deposition?
8 A. No, I did not.
9 Q. Did you look at any historical data, for
10 example, historical meaning from 2005,
11 August or -- August 2004 --
12 MR. POPEO: Objection.
13 Q. -- to prepare for this deposition?
14 MR. POPEO: Objection.
15 You may answer the question.
16 A. Not in preparation of this deposition. I
17 look at that as a matter of my regular
18 course of business.
19 Q. Okay.
20 MR. SCHER: Let's mark this as
21 Uzdevinis exhibit number 1.
22 (Defendants' Notice of
23 Rule 30(b)(6) Videotape
24 Deposition of Plaintiff John

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1 Hancock Life Insurance Company
2 marked exhibit number 1 for
3 identification.)
4 BY MR. SCHER:
5 Q. I will show you what I have had marked as
6 exhibit number 1.
7 (Handing exhibit number 1 to the
8 witness.)
9 Q. This is a document filed in this case. It
10 is entitled Defendants' Notice of
11 Rule 30(b)(6) Videotape Deposition, and
12 attached to it is an exhibit A, and listed
13 on exhibit A are 15 topics. Have you
14 reviewed all or a part of this exhibit in
15 preparation for this deposition?
16 A. I reviewed the last --
17 Q. From 10 on?
18 A. Yes. From 10 on as a part of this.
19 Q. Okay. And you understand that you have
20 been designated as the corporate
21 representative on those topics 10 through
22 15?
23 A. Yes, I do.
24 Q. Okay. Have you done anything to prepare

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1 for your testimony as the corporate
2 designee on topics 10 through 15 other
3 than your normal day-to-day activities?
4 A. Nothing outside of my normal day-to-day
5 activities.
6 Q. With respect to item number 10, "The
7 losses allegedly suffered by John Hancock
8 as a result of the failure of the Loan to
9 close, as referenced in Paragraph 16 of
10 the Complaint, including: the basis,
11 policy and practice relating to decisions
12 whether to invest funds in mortgage loans
13 or other investment vehicles; the
14 projected return on all investments by
15 John Hancock over the ten years beginning
16 on August 1, 2005; and the actual return
17 on all investments by John Hancock for the
18 10 year period ending August 1, 2005,"
19 have you done anything to prepare to
20 testify with respect to that?
21 A. I attempted to find whatever data I could
22 with respect to projections.
23 Q. And could you explain to me what you mean
24 by projections?

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1 A. Well, this is specifically asking the
2 projected return on all assets by John
3 Hancock over the 10 years beginning
4 August 1, 2005. That to me indicates a
5 projection.
6 Q. Okay. What, if anything, did you review
7 in connection with that?
8 A. I attempted to find out what may exist in
9 the way of projected returns for not only
10 the commercial mortgage asset class but
11 more importantly all of the assets, since
12 this is referencing all investments by
13 John Hancock. It goes well beyond the
14 realm of commercial mortgages. It
15 includes equity, common stock, and oil and
16 gas partnerships, a whole host of
17 information that I do not see normally.
18 Q. And did you look at those projections?
19 A. I was unable to obtain any projected data
20 on that.
21 Q. Okay. Why did you want to see projected
22 data? Because it was requested?
23 A. Because this says that I should be the
24 designee on the projected return for all

Page 15

1 investments.
2 Q. I see. Now is it your testimony that
3 there is no such projection or that you
4 just weren't able to find it?
5 A. I am unaware of any projections. I'm not
6 sure if it exists or doesn't exist.
7 Q. You are not aware of any projections
8 sitting here today; is that right?
9 A. For -- for -- that contain all asset
10 classes of John Hancock, that is correct.
11 Q. Do you have information on any asset
12 classes of John Hancock?
13 A. The information that I manage is
14 specifically the U. S. commercial mortgage
15 portfolio, for which we project a
16 three-year period, but not in terms of
17 total return. We project an anticipated
18 spread on new commitments.
19 Q. Could you explain to me what "an
20 anticipated spread on new commitments"
21 is?
22 A. When we commit to a deal, we agree to a
23 spread over some index. It is typically
24 treasuries. It could be LIBOR or some

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1 other commonly published index, so we --
2 Q. Just for the record, LIBOR is L-I-B-O-R?
3 A. L-I-B-O-R.
4 Q. I am sorry?
5 A. Loan Interbank Offer Rate, to be specific.
6 Q. Yes.
7 A. We agree typically to some spread over an
8 index. We may agree to an entire rate,
9 but what we are projecting is the
10 anticipated spread over a common index,
11 which we reference as the treasuries. We
12 convert everything to a treasury
13 equivalent.
14 Q. Okay. So you are saying that the U. S.
15 commercial mortgage portfolio projects and
16 has a projection for the three-year period
17 beginning August 1, 2005, which measures
18 the spread between new commitments and T
19 bills or --
20 A. That's correct.
21 MR. POPEO: Objection.
22 Just let him finish.
23 A. The -- but I would like to expand on that.
24 Q. Yes.

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1 A. We do this as a very detailed. We don't
 2 give one number. We break our portfolio
 3 down into groupings. And so I will
 4 estimate not for a given date, but for a
 5 year's worth of commitments.
 6 Q. So is there information regarding the
 7 losses that John Hancock suffered as a
 8 result of this particular loan in question
 9 in this case not having closed?
 10 MR. POPEO: Objection.
 11 A. I don't follow your question.
 12 Q. Does John Hancock have anywhere a measure
 13 of the losses it suffered as a result of
 14 the failure of the loan in dispute in this
 15 case having not closed?
 16 MR. POPEO: Objection.
 17 You can answer the question, if
 18 you understand it.
 19 A. I -- I am still unclear. I do not have a
 20 calculation. I did not produce a
 21 calculation of the losses in question. I
 22 am certain somebody produced one. I don't
 23 know who in fact did.
 24 Q. Okay. So as far as the losses suffered by

Page 18

1 John Hancock as a result of the failure of
 2 the loan in this case to close, you don't
 3 have any measure of that; is that
 4 accurate?
 5 MR. POPEO: Objection.
 6 Mischaracterizes.
 7 You can answer the question.
 8 MR. SCHER: It is a new
 9 question. I am not characterizing or
 10 mischaracterizing your prior testimony.
 11 Q. Do you have a measure of the losses
 12 suffered by John Hancock as a result of
 13 the failure of this loan to close?
 14 MR. POPEO: I object to the
 15 form. Does she have a measure, or can she
 16 testify for you today about that topic? I
 17 don't understand the question.
 18 THE WITNESS: Yes. I am still
 19 confused by his question.
 20 MR. SCHER: Okay.
 21 BY MR. SCHER:
 22 Q. The measure -- the measure is what is
 23 confusing you?
 24 A. No. The question is confusing me.

Page 19

1 Q. Okay. Do you have a calculation of the
 2 losses that John Hancock suffered as a
 3 result of the failure of the loan to
 4 close?
 5 A. Do I physically have that calculation?
 6 No, I don't have that calculation with me.
 7 Q. Do you know what that calculation is,
 8 whether it is in writing or in your head?
 9 A. I'm not certain of the exact number of
 10 that calculation. No.
 11 Q. Do you know what it consists of?
 12 MR. POPEO: I object to the
 13 form. How was it calculated, Howard?
 14 Q. How was it calculated?
 15 A. It should reflect what I would call the
 16 lost opportunity, that being once we
 17 commit to funds, we hold cash aside to
 18 follow through on a commitment, and so
 19 there is underlying changes in interest
 20 rates over that time period as well as
 21 predominant changes in the spread
 22 environment over that time period. That
 23 should reflect what I would refer to as an
 24 opportunity cost associated with a lost

Page 20

1 investment.
 2 Q. Well --
 3 A. Additional to that would be any real
 4 out-of-pocket costs for potential hedges
 5 or any other instruments needed.
 6 Q. Okay. You say you don't have the
 7 calculation; is that right?
 8 A. That is correct.
 9 Q. But you have performed such calculations
 10 in the past?
 11 A. I personally have not performed those
 12 calculations. No.
 13 Q. How do you know that the calculation
 14 should be performed that way?
 15 A. It is a function of the portfolio
 16 management area to opine on approaches
 17 used in all pricing aspects.
 18 Q. Okay. And this is a pricing aspect?
 19 A. That is correct.
 20 Q. That is a loss on a loan that doesn't
 21 close is a pricing aspect?
 22 A. That is correct.
 23 Q. And you said it would include the measure
 24 of the lost opportunity? That would be

Page 21

1 one component of it? Am I right about
2 that?
3 A. Um-hmm.
4 Q. Yes?
5 A. Yes.
6 Q. And another component would be any real
7 out-of-pocket costs for potential hedges
8 or any other instruments needed; right?
9 A. That's correct.
10 Q. Were there any others? Are there any
11 other losses of which you're aware?
12 A. None that I'm aware of.
13 Q. Okay. Now you say that the calculation
14 should reflect the lost opportunity, and
15 you defined that as being the loss
16 suffered from the moment that funds were
17 committed, is that right, --
18 A. That is correct.
19 Q. -- at the beginning date?
20 A. Yes.
21 Q. And is it accurate to say that the end
22 date is the date on which the loan did not
23 close?
24 MR. POPEO: I object to the

Page 22

1 form.
2 You can answer, if you can.
3 A. Yes. Could you rephrase that? I want to
4 be certain I'm answering properly.
5 Q. So I have the beginning date of the lost
6 opportunity?
7 A. Um-hmm.
8 Q. Is it accurate to say that the
9 opportunity, the lost opportunity, would
10 be measured by the beginning date you gave
11 and the end date, meaning the date on
12 which the loan did not close?
13 MR. POPEO: Objection.
14 A. I think it encompasses more than just that
15 limited time frame. That time frame is --
16 is what you use to establish those changes
17 in spreads or changes in rates, but the
18 losses actually suffered over the entire
19 anticipated life of the investment, it
20 does not stop on the date that a decision
21 is made to not go forward.
22 Q. And why is that?
23 A. Because we commit to funds and allocate at
24 commitment, and a line of business is,

Page 23

1 therefore, expecting that return until the
2 anticipated maturity date of that
3 commitment.
4 Q. And in this case when the John Hancock
5 knew that the loan would not close, what,
6 if anything, did it do with respect to the
7 commitment that you describe?
8 MR. POPEO: Objection.
9 You can answer.
10 Q. Do you understand what I am saying?
11 A. I believe I understand what you're saying.
12 Q. Okay.
13 A. And this is still to the best of my
14 knowledge an outstanding commitment in all
15 of our reports. We must make a line of
16 business whole, since funds are allocated
17 at time of commitment. So until we have a
18 way to disburse funds back to each line of
19 business to make them whole for the entire
20 anticipated loan, this remains an
21 outstanding commitment.
22 Q. What is the form of that commitment to
23 funds?
24 A. I'm not sure I follow your question.

Page 24

1 Q. You said that the measure -- the
2 calculation that you perform begins at the
3 time you commit to funds?
4 A. That is correct.
5 Q. I am using your phrase.
6 A. Yes.
7 Q. I'm not sure -- I'm not familiar with it.
8 A. Yes. That is correct.
9 Q. And what I want to know is what in fact
10 happens when the commit to funds occurs.
11 A. When a loan is committed to, we take the
12 total proceeds, and we allocate it to what
13 I will call a line of business or among a
14 series of lines of businesses. That makes
15 its way into a system that will pair up
16 the assets of that line of business with
17 the liabilities of that line of business
18 to do what we refer to as duration
19 tracking. They view it as a firm and
20 solid commitment at that point in time.
21 Q. Who is the "they"?
22 A. The lines of business.
23 Q. Okay. And then what happened?
24 A. It is treated as if it would be a regular

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1 asset in the portfolio. If it is expected
2 to close at a point in the future, it is
3 anticipated to be an asset at that
4 anticipated take-down date, as we refer to
5 it.
6 Q. What was the take-down date for this loan?
7 A. The anticipated -- well, it was not taken
8 down. The anticipated take down, I
9 believe, was August of 2005.
10 Q. And how do you know that?
11 A. I believe that is what I read.
12 Q. Where did you read that?
13 A. In the initial loan document.
14 Q. Did you review the initial loan document
15 for the purpose of preparing for this
16 deposition?
17 A. No, I did not. We review the loan
18 documents for the purposes of performing
19 bonus calculations.
20 Q. What bonus calculations?
21 A. The investment sector bonus calculations.
22 Q. What is the investment sector bonus
23 calculation?
24 A. It is a measure on which we pay incentive

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1 compensation.
2 Q. Could you explain to me what -- so this is
3 an incentive compensation paid to
4 employees of John Hancock?
5 A. That is correct.
6 Q. And that is based on what? What is your
7 role in calculating that?
8 MR. POPEO: I am going to
9 object.
10 I am going to let you go on this
11 line of questioning. I observe it is not
12 a topic of the 30(b)(6) notice that you
13 served on me and the witness.
14 MR. SCHER: Okay.
15 MR. POPEO: I expect you are
16 going to hustle through it, and we are not
17 going to get derailed today.
18 MR. SCHER: I am not hustling
19 through it. She used this document. She
20 knows about the loan. I want to know what
21 she knew about it.
22 MR. POPEO: The basis, Howard,
23 is what?
24 MR. SCHER: She made reference

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1 to it in the testimony.
2 MR. POPEO: Is this a fact
3 witness or 30(b)(6) witness? What are we
4 doing today?
5 MR. SCHER: I know what we are
6 doing today.
7 BY MR. SCHER:
8 Q. Please answer the question.
9 MR. POPEO: I will give you a
10 short leash.
11 MR. SCHER: You will give me
12 what I take.
13 BY MR. SCHER:
14 Q. Go ahead.
15 MR. POPEO: Let's be clear.
16 This deposition will end right now.
17 Mr. Scher. Okay? The witness is not
18 going to be badgered. We are not going to
19 have arguments today among each other. We
20 have done this enough together that I
21 think we both know what we are doing. If
22 you have a legitimate line of inquiry, you
23 may pursue it.
24 BY MR. SCHER:

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1 Q. You reviewed the loan documents for the
2 purpose of determining incentive
3 compensation for investment officers who
4 make loans; correct?
5 A. That is correct.
6 Q. In this case you reviewed the initial loan
7 document for the purpose of calculating
8 the bonus that Mr. Malik, for example,
9 would receive on this?
10 MR. POPEO: Objection.
11 A. Let me try to summarize it very --
12 Q. Please do.
13 A. -- briefly for you.
14 Q. Please do.
15 A. This -- what I am doing is not specific to
16 any individual loan officer. It is an
17 overall factor that applies to the entire
18 U. S. mortgage operation, not to any given
19 individual, and we look at and measure all
20 activity done over the year, whether that
21 be a commitment, a disposition, a
22 prepayment, expenses, revenue, many
23 components that go into our incentive
24 compensation plan. The reason I would

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1 have looked at this one is we flag each
2 and every forward commitment, which this
3 was, to be certain that it is properly
4 being reflected in our data.
5 Q. So this one sticks out in your memory as a
6 forward commitment; is that right?
7 A. That is correct.
8 Q. And this one being the loan to Avenel in
9 the amount of \$32 million; right?
10 A. That is correct.
11 Q. And how could this forward commitment --
12 what is it that you are worried about?
13 That the forward commitment will not be
14 accurately recorded?
15 MR. POPEO: Objection.
16 You can answer.
17 A. It is not a worry I have. I want to be
18 certain that we are properly reflecting
19 all forward commitments in fact as forward
20 commitments as opposed to immediate take
21 downs.
22 Q. I see. I see. And is it fair to say that
23 there is an effect on the bonus
24 calculation as between a forward

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1 commitment and an immediate take down?
2 A. No. There is no effect.
3 Q. Okay. So they are valued in the bonus
4 calculation exactly the same way?
5 A. Identically.
6 Q. So what is the accounting difference?
7 A. There is no accounting difference from a
8 pure accounting standpoint. There is the
9 concern of a proper projection difference
10 to the line of business, since we allocate
11 these deals when they are committed based
12 on the funds that they will have available
13 at the anticipated time of take down.
14 Q. Okay.
15 A. So I need to know that the take down is
16 correct, so that the allocation is
17 correct.
18 Q. All right. So if I have this right, as of
19 August 2004 there was a forward commitment
20 in connection with this loan, and you are
21 concerned that the books and records of
22 John Hancock might reflect that as an
23 immediate take down when it makes an
24 allocation to lines of business; is that

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1 right?
2 MR. POPEO: Objection.
3 You can answer the question.
4 A. I'm not -- I'm not sure exactly what you
5 mean by the books of John Hancock. I am
6 concerned about the projections of the
7 real estate finance group.
8 Q. So the projections of the real estate
9 finance group is your concern, and you
10 want to be sure that the allocation with
11 respect to this \$32 million loan is
12 reflected as a forward commitment as
13 contrasted with an immediate take down?
14 A. That is correct.
15 Q. Am I right about that?
16 A. That is correct.
17 Q. Now how is that difference reflected?
18 A. There isn't a difference reflected so much
19 as a difference in how we would allocate.
20 We allocate funds based on accounts,
21 segments, lines of business -- whatever we
22 wish to call them -- based on their
23 investment demand, and investment demand
24 is provided monthly for a period going

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1 forward 16 months. So to properly
2 allocate it, I have to be certain that I
3 am using the proper anticipated take-down
4 period.
5 Q. Okay. So if I understand you correctly,
6 in August of 2004 you wanted to be sure
7 that there was no line of business which
8 anticipated the receipt of the 32 million
9 -- a portion of the \$32 million
10 immediately?
11 MR. POPEO: Objection.
12 A. That is correct.
13 Q. And instead, you wanted to be sure that
14 those lines of business, if we can call
15 them lines of business, would not
16 anticipate the receipt of that investment,
17 that portion of the \$32 million loan,
18 until the anticipated take down of that
19 loan?
20 A. I'm not 100 percent sure I followed your
21 question.
22 We take a line of business, and
23 we will indicate the asset at the time of
24 commitment, reflecting that line's

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1 anticipated demand at the point of take
2 down, but we report immediately to that
3 line of business that they have made a
4 commitment.
5 Q. I understand.
6 A. Okay.
7 Q. Okay. So that they know that beginning in
8 in this case August of 2005 at the --
9 well, that -- let's just use that --
10 MR. SCHER: Let's strike that
11 date.
12 Q. They are informed, the line of business is
13 reported immediately that it will have a
14 portion of the \$32 million loan in this
15 case? They know that; is that right?
16 A. That is correct.
17 Q. And but you want to be sure that they know
18 that their portion of the \$32 million will
19 not be received by them until the take
20 down, which is sometime in the future?
21 A. I want to be certain that they are aware
22 that that asset will not physically appear
23 on the company's books until some point in
24 the future.

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1 Q. Okay.
2 A. They have already begun planning, assuming
3 that asset is going to happen.
4 Q. So you know that the line of business
5 begins planning on the take down of the
6 loan when they receive the report that
7 they will be given a portion of it?
8 A. No. That is incorrect. They begin
9 planning from the date of commitment.
10 Q. So they begin planning for the portion of
11 the \$32 million loan on the date of
12 commitment?
13 A. That is correct.
14 Q. And what does that planning consist of?
15 A. When we put on a forward asset, if that
16 asset and liability duration that I
17 referenced earlier happens, there may be
18 the need to put on portfolio-level hedges.
19 They are treating it as a known and actual
20 commitment.
21 Q. What in fact happened with respect to this
22 \$32 million loan from the date of
23 commitment at the lines of businesses to
24 which it was allocated?

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1 A. Each of the lines of business was made
2 aware that they had been allocated X
3 dollars.
4 Q. They were reported that?
5 A. And that gets reported as well to the
6 duration management team, the asset
7 liability management area, to put into a
8 duration tracking system, and it is viewed
9 as an asset. If there is the need for a
10 portfolio hedge, it is applied at that
11 time.
12 Q. Anything else?
13 A. Not that I can think of at this time.
14 Q. Did the lines of business do anything else
15 beyond that at all in the history of this
16 loan, this \$32 million loan?
17 MR. POPEO: I object to the
18 form.
19 If you understand that question,
20 you can answer it.
21 THE WITNESS: I don't. I don't
22 really understand that question.
23 Q. Okay. So I said -- you said that each of
24 the lines of business was made aware that

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1 they had been allocated X dollars, a
2 portion of the 32 million?
3 A. Um-hmm.
4 Q. Do I have that right?
5 A. You have that correct.
6 Q. And then you said that that information,
7 that is the portion of the \$32 million to
8 which each line of business has been
9 allocated, is also put into a duration
10 tracking system. I assume that is a
11 computer measuring system?
12 A. It is an application. That's correct.
13 Q. It is an application in a computer; right?
14 A. Yes.
15 Q. Okay. And then you said that if there is
16 a need for a portfolio hedge, it is
17 applied at that time. Was there a need
18 for a portfolio hedge with respect to any
19 of these lines of business for any portion
20 of the \$32 million?
21 A. I believe I understand your question now.
22 So I will answer what I believe your
23 question is.
24 The portfolio-level hedges are

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1 done by the asset liability management
 2 area, not the line of business, and they
 3 are done at the overall portfolio level,
 4 meaning the total general funds of John
 5 Hancock, as opposed to at a given owner's
 6 line of business.
 7 Q. So what is the size of the portfolio?
 8 MR. POPEO: I object to the
 9 form.
 10 You can answer, if you can.
 11 Q. Just approximate.
 12 A. The total portfolio?
 13 Q. Yes.
 14 A. Or the mortgage portfolio?
 15 Q. The mortgage portfolio. Let's stay with
 16 that.
 17 A. Well, the mortgage portfolio is
 18 12 billion.
 19 Q. Okay.
 20 A. But we do not hedge at an asset-specific
 21 level.
 22 Q. That is what you are saying? You are
 23 saying that again?
 24 A. Um-hmm.

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1 Q. So that no portion -- you couldn't trace
 2 any portfolio hedge to the \$32 million
 3 commitment? Am I right about that?
 4 MR. POPEO: Objection.
 5 You may answer.
 6 A. I have not attempted to trace it. That is
 7 outside of my function.
 8 Q. Okay. And you do not know whether in fact
 9 there was a portfolio hedge that could be
 10 traced to any portion of the \$32 million?
 11 Am I right about that?
 12 A. That's correct. I am not sure if there
 13 was.
 14 Q. What else, if anything, occurs at the time
 15 that the commitment is made beyond the
 16 reporting of that commitment to the lines
 17 of business and the duration tracking
 18 system input and the possibility that
 19 there would be a portfolio hedge?
 20 MR. POPEO: Objection.
 21 You may answer.
 22 A. I'm not 100 percent sure I'm following you
 23 there. For each and every commitment we
 24 get, we begin recording it and treating it

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1 as an asset that is or will be on the
 2 books at the expected take-down date.
 3 Q. What does that treatment consist of?
 4 A. Measuring and recording them for a whole
 5 host of uses. We report to agencies such
 6 as the American Council of Life Insurers
 7 on our commitment activity. We report to
 8 the Canadian government's OSFI on our
 9 commitment activities. I don't -- I could
 10 not rattle off for you right now an
 11 extensive list of all the reports we do,
 12 but there is a whole host of reporting,
 13 both internally and externally, that is
 14 based on our commitment data.
 15 Q. Were any of those reports, did any of
 16 those reports --
 17 MR. SCHER: Strike that.
 18 Q. Were any of the reports that you just
 19 recited made with respect to the
 20 \$32 million loan commitment in August of
 21 2004?
 22 MR. POPEO: Objection.
 23 MR. SCHER: What is the basis?
 24 MR. POPEO: I didn't understand

Page 40

1 the question.
 2 MR. SCHER: Okay.
 3 A. We report --
 4 Q. Do you understand that question?
 5 A. I believe I do.
 6 Q. Okay.
 7 A. We report periodically, and so depending
 8 on the frequency of which we report and to
 9 whom we were reporting, this commitment
 10 would have been included.
 11 Q. Sitting here today, do you know whether in
 12 fact the \$32 million commitment made in
 13 August of 2004 was reported to any agency?
 14 A. Sitting here today without looking back in
 15 time, I could not answer that question.
 16 Q. Okay. Now in about June of 2005, the John
 17 Hancock was informed that the borrower
 18 would not borrow the \$32 million. Do you
 19 know that?
 20 A. I did not know the date. You have just
 21 informed me.
 22 Q. Okay. Let's assume for the purposes of my
 23 question --
 24 A. All right.

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1 Q. -- that it was in June of 2005. What, if
2 any, action did John Hancock take with
3 respect to this particular loan and its
4 commitment following June of 2005?

5 MR. POPEO: Objection.

6 A. That question I'm not sure I do follow.
7 Q. Okay. Did John Hancock do anything, for
8 example, when it learned that the loan
9 would not close, did it do anything to
10 report to anyone, whether to the lines of
11 business, to agencies in Canada or the
12 United States, to anyone anywhere that
13 fact, that the loan was not going to close
14 to the best of your knowledge?

15 MR. POPEO: Objection.

16 A. Right. I can't answer to what happened on
17 this specific loan without going back and
18 looking at a trail of how reports may have
19 changed as a result of this loan. The
20 standard practice when we know a loan for
21 whatever reason will have a change is to
22 report those changes.

23 Q. All right.

24 A. Whether it is extending the anticipated

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1 take-down date, moving it forward, any
2 status change, as I would refer to it,
3 gets reported --

4 Q. All right.

5 A. -- since people must begin to plan
6 financially for that.

7 Q. So that implicit in your answer was that
8 is how the report to the lines of business
9 occurs; right?

10 A. That is correct.

11 Q. Do you know whether in fact the lines of
12 business were notified that the loan would
13 not be taken down?

14 A. Sitting here right now, I do not. I would
15 have to go back and look that up.

16 Q. You have no information on that subject?

17 A. Not at my fingertips, no.

18 Q. Okay. You did not prepare to report to me
19 on that subject?

20 A. That is correct.

21 Q. Similarly, do you know whether John
22 Hancock notified any of the governmental
23 agencies or trade associations, I'm not
24 sure what those agencies were, with

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1 respect to the elimination of the take
2 down of that loan?

3 A. Without looking at the report, I couldn't
4 tell you, but I can tell you the
5 directions that are provided to us. It is
6 report on commitments, the understanding
7 is that all commitments will close. We do
8 not include loans until they have been
9 fully committed to.

10 Q. Okay.

11 A. So the directions make no allowance for a
12 deal that does not fund.

13 Q. And so that loan, the \$32 million -- the
14 report of the commitment with respect to
15 the \$32 million will remain unchanged
16 until the expiration of the 10-year
17 duration of the loan; is that right?

18 MR. POPEO: Objection.

19 A. The reports that we make externally to
20 groups like the ACLI are exclusively on a
21 commitment basis. We report to them once
22 and only once when the commitment is made.

23 Q. You don't report when the loan has been
24 paid off?

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1 A. That is correct.

2 Q. So the only reporting of the non-take down
3 of the loan would have been made to lines
4 of businesses, and you can't tell me
5 whether any such reports were made?

6 MR. POPEO: Objection.

7 You can answer.

8 A. It would have been made to both lines of
9 businesses as well as our asset liability
10 management area, but I cannot tell you as
11 to whether or not those reports were made.
12 You are correct.

13 Q. Would it also be made to the duration
14 tracking system?

15 A. That is the asset liability management
16 area.

17 Q. All right.

18 A. They run the duration tracking system.

19 Q. Sorry.

20 A. That's okay.

21 Q. You forgive me for not knowing that.

22 What is the form of notification
23 to the lines of businesses and the
24 duration tracking system? E-mail? Or --

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1 A. Form -- I will tell you the form for
 2 commitments. For commitments, we produce
 3 what are referred to as internal trade
 4 tickets, and those are e-mailed to all
 5 parties, lines of businesses and ALM.
 6 Q. ALM is?
 7 A. The asset liability management area.
 8 Q. All right.
 9 A. That runs the duration tracking system.
 10 Q. ALM. Good. From now on, I promise I will
 11 use ALM.
 12 A. That's okay.
 13 Q. So are these trade tickets, just
 14 physically, are they attachments to
 15 e-mails? Is that what they --
 16 A. That is correct.
 17 Q. What program generates the trade tickets?
 18 What computer software program?
 19 A. I believe it is Excel, but I'm not sure.
 20 Q. Okay. And your testimony is that if this
 21 loan had been properly treated, the
 22 \$32 million loan --
 23 MR. SCHER: Strike that.
 24 Q. Do you know whether in fact this

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1 \$32 million loan commitment in August of
 2 2004 resulted in the distribution of
 3 internal trade tickets to the lines of
 4 business and to ALM?
 5 A. Yes.
 6 Q. You do know that?
 7 A. I do.
 8 Q. How do you know that?
 9 A. I was the recipient of that e-mail.
 10 Q. Okay. And now does the -- does John
 11 Hancock notify the lines of business
 12 and/or ALM when a loan does not close,
 13 that a take down -- when it is learned
 14 that a take down will not occur?
 15 A. That question I cannot answer with
 16 certainty, because I'm unaware of any loan
 17 other than this one that did not fund.
 18 Q. Do you know whether the internal trade --
 19 whether the lines of business or ALM were
 20 notified when it was determined that this
 21 loan would not fund?
 22 A. I'm not aware of the method that -- used
 23 when -- when it was determined this loan
 24 didn't fund.

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1 Q. You weren't a recipient of any
 2 notification that the loan would not fund?
 3 Is that what you are saying?
 4 A. I don't recall getting any notification.
 5 Q. So sitting here today, and what is it --
 6 in what capacity did you receive the trade
 7 ticket for this loan?
 8 A. In two capacities: the first is the
 9 measurement of the investment performance
 10 for the incentive plan.
 11 Q. Okay. And what is the other?
 12 A. The second is the overall portfolio-level
 13 review.
 14 Q. Now when -- for the purposes of the
 15 incentive plan, was there any effect on
 16 the incentive plan as a result of the loan
 17 not closing?
 18 MR. POPEO: Objection.
 19 A. That question is harder to answer, since
 20 the plan changes each year, and the plan
 21 that would be in effect in the year 2004
 22 and the plan that would be in effect in
 23 the year 2005 could have had different
 24 measurement metrics.

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1 Q. But in any event, you don't recall knowing
 2 that the loan was not going to close as of
 3 June of 2005?
 4 A. That is correct.
 5 Q. Is that right?
 6 A. That is correct.
 7 Q. And likewise the overall portfolio level
 8 review, did you ever -- did the fact that
 9 the loan was not going to close as of July
 10 -- as of June of 2005, did that have any
 11 effect on the overall portfolio level
 12 review?
 13 MR. POPEO: Objection.
 14 You can answer the question.
 15 A. I'm still unsure if I would have even have
 16 been notified that this loan was not going
 17 to close --
 18 Q. Okay.
 19 A. -- in June of 2005, so I can't give you an
 20 answer as to an effect on the portfolio
 21 review.
 22 Q. So if I have it right, sitting here today
 23 you don't know what that means.
 24 To the best of your knowledge,

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1 you know of no notification that the loan
2 was not going to close?
3 A. I am unaware of any notification. There
4 may have been some, but I'm unaware of
5 any.
6 Q. Okay. Are you aware of any -- is your
7 description of the notification process --
8 could your description of the notification
9 process be considered the setting aside an
10 allocation of funds?
11 MR. POPEO: Objection.
12 A. Could you rephrase that? I'm not sure I
13 am following that.
14 Q. Do you know whether funds were set aside
15 and allocated in connection with the
16 commitment made with respect to the
17 \$32 million loan?
18 A. Yes. At the time of commitment, funds
19 were allocated and notification was made.
20 Q. Okay. And the form of allocation and
21 setting aside, you have just -- you have
22 described to me in your testimony today as
23 the notification of to lines of business
24 and ALM; is that right?

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1 A. That is correct.
2 Q. Is there anything else beyond that which
3 you consider to have constituted the
4 setting aside or allocating of funds?
5 MR. POPEO: Objection.
6 You can answer.
7 A. I'm not sure I follow it.
8 Q. Other than what you have testified to,
9 that is notification to the lines of
10 business and to ALM of the existence of a
11 commitment, and the information contained
12 in that notification would include the
13 portion of the \$32 million each line of
14 business had been allocated, --
15 A. Yes.
16 Q. -- is there any other allocation or
17 setting aside that occurs?
18 MR. POPEO: The same objection.
19 A. For that particular loan, no. We allocate
20 it once at commitment.
21 Q. Okay. And since the loan didn't close,
22 was there any other action -- was there
23 any action taken by any of the lines of
24 business or by ALM to the best of your

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1 knowledge after learning that the -- after
2 the loan didn't close, did the lines of
3 business or ALM take any action?
4 MR. POPEO: Objection.
5 A. I would have to actually ask each of those
6 groups to find out how they were informed
7 of the loan not closing. Typically, there
8 can be a change in an anticipated take-
9 down date, and they would take action
10 simply on that change, whether it is a
11 loan not closing or just changing the
12 date.
13 I do not know how they know when
14 a loan is not going to close. I would
15 have to go back and research that.
16 Q. Okay.
17 A. It doesn't happen often --
18 Q. Okay.
19 A. -- if at all.
20 Q. And so you don't know of any action that
21 the lines of business or ALM took with
22 respect to the loan not closing?
23 A. I am unaware of any action. That is
24 correct.

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1 Q. After the June of 2005 when it was known
2 that the loan would not close, are you
3 aware of any action that John Hancock took
4 to reduce whatever loss it might suffer
5 from the fact that the loan was not going
6 to be taken down?
7 MR. POPEO: Objection.
8 A. Could you rephrase that?
9 Q. Yes. After John Hancock learned that the
10 loan would not be taken down, do you know
11 of any action taken by anyone at John
12 Hancock, including the lines of business
13 or ALM, to reduce whatever loss John
14 Hancock might suffer?
15 MR. POPEO: Objection.
16 You can answer.
17 MR. SCHER: What is the basis?
18 MR. POPEO: You have so many
19 problems with that question, I am not
20 going to go through seriatim. I object to
21 the form of the question.
22 MR. SCHER: Okay. Let's just do
23 it this way.
24 BY MR. SCHER:

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1 Q. You know that John Hancock learned that
2 the loan would not close, would not be
3 taken down; right?
4 A. You told me they know that. I do not -- I
5 am not aware of how we learned that the
6 loan wouldn't close or to whom that
7 notification was given.
8 Q. Okay. Do you know of any action, anything
9 that any of the lines of business did
10 after they learned that the loan wouldn't
11 close?
12 A. Lines of businesses would not directly
13 take action. It is an asset matter. It
14 is an asset input to the lines of
15 businesses portfolio. To the extent there
16 is any change in asset makeup, there ends
17 up being a rebalancing of the portfolio,
18 and the moneys would be sitting in cash
19 until such time as a replacement asset
20 could be found. So I would have to
21 surmise -- I have no proof of any of this
22 -- that the money is -- would be sitting
23 in cash.
24 Q. Okay. So to the best of your knowledge,

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1 the money in question is sitting in
2 cash, --
3 A. To the --
4 Q. -- the \$32 million?
5 A. To the best of my knowledge, that is
6 correct.
7 Q. And when you say cash, do you mean cash?
8 A. I mean what we refer to as cash and money
9 market operations. It could physically be
10 in cash; it could be in commercial paper,
11 any one of the short-term instruments that
12 is managed by our money market operations
13 group.
14 Q. And what are those instruments?
15 A. I don't know the full breadth of that. We
16 would have to -- you would have to ask the
17 money management, the money market
18 operations group.
19 Q. Is that reported anywhere, the various?
20 A. It is the cash and short-term holdings of
21 the company that gets reported on all the
22 annual statements, annual reports.
23 Q. Okay. And there, as I understand your
24 testimony, there is no effort to maximize

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1 the return for that particular \$32 million
2 loan --
3 MR. POPEO: I object.
4 Q. -- money; right?
5 MR. POPEO: I object to the form
6 of the question.
7 You can answer.
8 A. I wouldn't characterize anything as saying
9 there is no effort to maximize return.
10 The process we use is we are given money
11 when we make an investment. It comes out
12 of the cash pool for us to have a
13 commitment. It -- and any time, for any
14 reason, a maturity, a prepayment, any
15 moneys that come back to the company, go
16 back into a cash pool until such time as
17 they are reallocated to another asset
18 class. So implicit in that would be the
19 maximizing of return, but it has to fall
20 under the general allocations among asset
21 classes for the total assets of the
22 company.
23 Q. Do you know whether the \$32 million has
24 been allocated to an asset class?

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1 A. That particular \$32 million? I have no
2 knowledge of. But our cash balance has
3 been steadily growing.
4 Q. So to the best of your knowledge, the
5 \$32 million loan commitment made in August
6 of 2004 --
7 MR. SCHER: Strike that.
8 Q. Was that -- was there -- let me see if I
9 am -- I am trying to understand.
10 When the internal trade ticket
11 was sent to the line of business, that
12 didn't result in the line of business
13 placing a portion of the \$32 million in
14 cash, did it?
15 MR. POPEO: Objection.
16 A. The lines of business don't have their own
17 individual cash accounts. There is an
18 overall cash account for the company. The
19 lines of business were notified so they
20 could know what future asset they would
21 have an ownership interest in. They will
22 be earning money on a combination of their
23 actual assets, which include cash, at any
24 given point in time.

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1 Q. Well, when the decision to make the
2 commitment occurred, other than the
3 notifications that you have described, was
4 there any change in the allocation of
5 assets at the company as a result of the
6 \$32 million commitment having been made?

7 MR. POPEO: I object to the
8 form. She has testified about a change in
9 the allocation. Other than what she has
10 testified to?

11 MR. SCHER: Yes. That's all.
12 A. There are asset allocation targets set by
13 the ALM group for how much money should be
14 in collections of assets, fixed income and
15 nonfixed income and some subasset classes.
16 No given investment would change the
17 target percentages.

18 Q. Okay. And likewise when an asset -- when
19 a commitment either is paid, whether a
20 loan is made and it is repaid or a loan is
21 not funded or not taken down, there is no
22 change in the asset allocation, is there?

23 MR. POPEO: Objection.

24 A. The target asset allocations do not in

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1 fact change unless there is an underlying
2 investment strategy change throughout the
3 company. Where the actual assets lie
4 relative to that target could be anywhere,
5 and we have been underweighted in
6 commercial mortgages for at least a year.
7 We cannot place enough commercial
8 mortgages. So the targets as a result of
9 this would not have changed whatsoever,
10 but our ability to meet that target would
11 be falling farther behind.

12 Q. Who is -- what else is included in the
13 target? In other words, what other kinds
14 of investments?

15 A. There is an asset allocation for fixed
16 income and nonfixed income, and then it
17 varies, based on ALM's strategy, how far
18 refined they go.

19 Q. Okay.

20 A. It includes mortgages. It could include
21 public bonds and private bonds. There is
22 -- they have varying targets that they set
23 by companies.

24 Q. And how do they set those targets?

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1 A. I'm unaware of the practices they use.

2 Q. And that is at -- is that at the Manulife
3 level?

4 MR. POPEO: Objection.

5 A. It is at a company level, legal entity
6 level. So it would be John Hancock.

7 Q. John Hancock?

8 A. -- Manulife Canada. They would set
9 targets for each of the companies.

10 Q. And you don't know what the targets were
11 for the companies in 2004-2005?

12 A. I could look up at any point in time.
13 They publish that data. I do know that
14 the target for commercial mortgages is
15 between 20 and 28 percent of total
16 invested assets.

17 Q. And hasn't been met for at least a year?

18 A. That is correct.

19 Q. Can you approximate how much prior -- how
20 long prior to 2005 was the mortgage loan
21 portfolio target not met?

22 MR. POPEO: Objection. Do you
23 mean how many years other than 2005 was
24 the target not met?

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1 MR. SCHER: How many years
2 prior.

3 MR. POPEO: In each of the prior
4 years, was it met or not met?

5 BY MR. SCHER:

6 Q. Was it met in 2004?

7 A. The question is not as difficult as it
8 sounds like it could be, since those
9 targets were imposed by Manulife.

10 Q. Ah-ha.

11 A. And they were first given to us --

12 Q. April 28th?

13 A. -- with the year beginning 2005.

14 Q. Okay. So for the only year for which
15 there was a target, it was not met; is
16 that right?

17 A. As measured for John Hancock.

18 Q. Right. And now you are not testifying
19 that it was not met by \$32 million, are
20 you?

21 A. No, I am not.

22 Q. The target was not met by a long shot?

23 A. That is correct.

24 Q. Can you approximate in billions?

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1 A. For commercial mortgages?
 2 Q. Yes.
 3 A. I could tell you for the one year we
 4 measured, we are shy by four to six
 5 hundred million --
 6 Q. Okay.
 7 A. -- depending on which lines of business
 8 you include.
 9 Q. Are you aware of any costs pertaining to
 10 this particular loan or closing charges
 11 associated with this particular loan?
 12 MR. POPEO: Objection.
 13 You may answer the question.
 14 A. I'm not aware of those costs. That would
 15 be done by another group.
 16 Q. What group?
 17 A. Presumably the closing and/or servicing
 18 group.
 19 Q. And who is the head of the closing group?
 20 Arthur?
 21 A. Arthur Francis is currently the head of
 22 the closing division.
 23 Q. Okay. And what are his duties and
 24 responsibilities?

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1 A. I do not know his full extent of duties
 2 and responsibilities.
 3 Q. But he would know what costs pertaining to
 4 this particular loan were?
 5 A. To the best of my knowledge, he would be
 6 the person --
 7 Q. Okay.
 8 A. -- to go to.
 9 Q. And do you know whether there were any
 10 commitments made to third parties in
 11 connection with this loan?
 12 A. I'm unaware of any third-party
 13 commitments.
 14 Q. Would that be Mr. Francis' knowledge as
 15 well or not?
 16 A. I don't know.
 17 Q. Okay. And other than the internal trade
 18 ticket process which you have described,
 19 are you aware of any calculation --
 20 MR. SCHER: Strike that.
 21 Q. Have you calculated what damages, losses,
 22 costs or expenses resulted from the
 23 internal trade ticket having been
 24 distributed and the loan not closing?

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1 MR. POPEO: Objection.
 2 Answer the question, if you can.
 3 A. I have not calculated any costs specific
 4 to this loan.
 5 Q. Have you calculated any losses specific to
 6 this loan?
 7 A. No. I have not made any calculations as a
 8 result of this loan not closing.
 9 Q. Okay. Do you know how the application and
 10 commitment fees that are in this case were
 11 applied?
 12 A. In any loan when we get application and
 13 commitment fees, it will vary with the
 14 type of fee that is received, but in cases
 15 such as this when it is a forward
 16 commitment, they are put into a suspense
 17 account and held in suspense until such
 18 time as the loan would fund.
 19 Q. And what in fact happened with these fees?
 20 A. They were put into suspense.
 21 Q. And where are they now?
 22 A. They are sitting in suspense.
 23 Q. And is that the result of an investigation
 24 that you undertook to verify?

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1 MR. POPEO: Object. Does she
 2 know that because of an investigation?
 3 Q. How do you know that?
 4 A. I know that because I have asked the
 5 finance people where the fee income of all
 6 types of fees that we collect gets
 7 recorded.
 8 Q. And what about the fee income for this
 9 particular loan?
 10 A. I have not looked up this particular loan,
 11 but my assumption is if all deposits and
 12 fees are booked through suspense, that
 13 this one likewise was booked into
 14 suspense.
 15 Q. And when is that suspense ended, other
 16 than at the funding?
 17 A. To the best of my knowledge, it is at the
 18 funding. I'm unaware of loans that have
 19 not closed.
 20 Q. Well, will that suspense be in perpetuity
 21 as far as you know?
 22 A. Clearly at some point some action would
 23 have to be taken to release funds from
 24 suspense. I'm not sure other than funding

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1 what notification would happen to remove
 2 moneys from suspense.
 3 Q. Okay. So sitting here today or whatever,
 4 that preparatory remark is -- you don't
 5 know how a fee is removed from suspense
 6 other than by funding?
 7 A. That is correct.
 8 MR. POPEO: Let's take a break
 9 when you have a chance, Howard.
 10 MR. SCHER: Okay. Just give me
 11 a second.
 12 (Pause.)
 13 BY MR. SCHER: Okay. This is a
 14 good time.
 15 (Recess taken at 3:17 p.m.)
 16 (Recess ended at 3:23 p.m.)
 17 BY MR. SCHER:
 18 Q. Now you testified that there was an
 19 opportunity cost associated with a lost
 20 investment; is that right?
 21 A. That's correct.
 22 Q. And I would like to ask you to describe to
 23 me what that opportunity cost was with
 24 respect to the loss of the Avenel

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1 \$32 million loan in June of 2005.
 2 A. Okay. I think my answer actually has to
 3 have two parts to it, if I'm following you
 4 correctly.
 5 The loss that is listed in this
 6 case is -- I think it was 4.7 million or
 7 thereabouts -- is viewed as the loss
 8 between the rate on the deal and the
 9 10-year treasury rate, which is what
 10 someone is quantifying as opportunity
 11 cost.
 12 From my vantage point in
 13 portfolio management, I feel that is too
 14 conservative a measure of opportunity
 15 cost. I feel that the real cost should be
 16 measured down to the earnings rate where
 17 the funds would be, namely, the yield on
 18 our money market operations, our cash and
 19 short term.
 20 So I have seen the calculation
 21 for this, and I understand it and follow
 22 it under the assumption that we could earn
 23 a 10-year treasury rate, but I would argue
 24 the opportunity cost is really where our

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1 marginal dollar would get invested, namely
 2 at the cash and short-term rate.
 3 Q. And in what connection did you see that
 4 \$4.7 million calculation?
 5 A. I saw it as an attachment to one of the
 6 legal pieces of paper that were floating
 7 around the office.
 8 Q. Okay. And was it in connection with your
 9 preparation for this testimony?
 10 A. No. I actually saw it in an REFG
 11 management meeting.
 12 Q. REFG?
 13 A. REFG management meeting, because I was
 14 sitting beside a lawyer.
 15 Q. And you saw the exhibit which calculated
 16 \$4.7 million as the loss?
 17 A. That is correct.
 18 Q. And that calculation was the rate of the
 19 deal, meaning the interest rate at which
 20 John Hancock had committed to loan
 21 \$32 million in that forward commitment and
 22 subtracted from that was the 10-year
 23 treasury; is that right?
 24 A. At the time the deal was no longer going

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1 to be funded.
 2 Q. Now what is the earnings rate in cash or
 3 short-term money that John Hancock is
 4 experiencing beginning in August of 2005
 5 or June of 2005?
 6 A. I don't know those numbers off the top of
 7 my head. I would have to go back and get
 8 them. They are expressed monthly by the
 9 money market operations area.
 10 Q. And your testimony is that they are lower,
 11 that the interest rates are lower in the
 12 cash and short term than 10-year treasury?
 13 A. That is correct.
 14 Q. It is not your testimony that the earnings
 15 on cash and short term is the best return
 16 that John Hancock can realize, is it?
 17 A. No, it is not my testimony. That is where
 18 incremental dollars are currently sitting
 19 until such time as we can meet our target
 20 asset allocations.
 21 Q. Could you explain that to me? In other
 22 words, until you met that 400 to 600
 23 million dollars shortfall?
 24 A. That's correct. We have the investment

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1 strategy group which is trying to take all
 2 asset classes and work with the asset
 3 liability management folks to develop
 4 strategies to maximize returns. That
 5 means they are developing target asset
 6 mixes for each and every asset class that
 7 they will allow the company to invest in,
 8 and they set those targets. So
 9 incremental moneys sit in cash until such
 10 time as each one of the asset managers can
 11 meet their targets.
 12 Q. And that is a decision made by what group?
 13 MR. POPEO: Objection. Which
 14 decision?
 15 MR. SCHER: The decision that it
 16 sits in cash.
 17 A. I'm unaware that there is an actual
 18 decision to sit in cash. I'm aware that
 19 both the chief investment strategist and
 20 the chief financial officer set investment
 21 strategies and investment targets for each
 22 of the asset managers to hit, but the
 23 asset managers are self-included, have
 24 underwriting standards which we will not

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1 do business. So we will not go out and
 2 just blatantly meet that target and damage
 3 our underwriting standards. So they
 4 understand and recognize that at any given
 5 point in time an asset manager may have a
 6 shortfall relative to their target. How
 7 specifically they address repetitive
 8 shortfalls and what alternative asset
 9 class they put it into, I'm not aware.
 10 Q. That is yet to be seen; is that right?
 11 This is a relatively new program?
 12 MR. POPEO: Objection.
 13 A. The program for Manulife is not a new
 14 program. The inclusion of John Hancock
 15 into this measurement metric is new. But
 16 even under John Hancock's world, we had a
 17 significant cash position, because we
 18 could not get enough of the ultimate
 19 investments we wanted to make in fixed
 20 income securities.
 21 Q. So even before the Manulife acquisition,
 22 your testimony is that you had
 23 insufficient mortgage loan opportunities?
 24 A. That met our underwriting standards.

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1 Q. That met --
 2 A. That is correct.
 3 Q. And is the shortfall greater now or less
 4 than it was since Manulife has acquired
 5 John Hancock?
 6 A. I think it would be hard to say it is
 7 greater or less, because it --
 8 Q. The targets have changed?
 9 A. Lines of business have been realigned;
 10 segments have been realigned. There has
 11 been a shifting in the way assets get
 12 recorded, so.
 13 Q. Okay. What other investment opportunities
 14 are there that -- for which you are
 15 responsible?
 16 A. For which I am responsible?
 17 Q. Yes.
 18 A. The only opportunities that I'm
 19 responsible for in terms of actually
 20 making or overseeing the making of
 21 investments are for lower quality 144A
 22 classed CMBS investments that the real
 23 estate finance group makes.
 24 Q. I see. But the total of the 25 to

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1 28 percent assets which are allocated,
 2 what other investments are there? What
 3 other investment types are there?
 4 A. That total mortgage allocation, which is
 5 the 20 to 28 percent, is a combination of
 6 agricultural mortgages and commercial
 7 mortgages. It is solely a mortgage total.
 8 Q. All right.
 9 A. It is commercial mortgages and
 10 agricultural mortgages.
 11 MR. POPEO: What is the range?
 12 THE WITNESS: My understanding
 13 is that the range is 20 to 28.
 14 MR. SCHER: Sorry.
 15 THE WITNESS: If I misspoke
 16 earlier --
 17 MR. SCHER: It doesn't matter.
 18 BY MR. SCHER:
 19 Q. What is the rest of the investment package
 20 made of other than agricultural and
 21 commercial mortgage loans?
 22 MR. POPEO: Aside from the 20 to
 23 28 percent allocation?
 24 MR. SCHER: Yes.

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1 A. I don't know the specifics of as to how
2 refined each asset class goes. They show
3 a fixed income number and a nonfixed
4 income number. Some segments break fixed
5 income down into more discrete points than
6 others. I'm unaware of how specifically
7 they track it all, but there would clearly
8 be a number of asset subclasses beneath a
9 public bond, for example, and in nonfixed
10 income, they show a total for nonfixed
11 income. Likewise, they most likely have
12 defined targets for each of the equity
13 types we invest in, but I'm unaware of
14 them.
15 Q. Are the equity types outside the assets
16 that you are describing?
17 MR. POPEO: Objection.
18 Q. Are they assets within that 20 -- are
19 they, that make up the balance of the 20
20 to 28 percent?
21 A. The 20 to 28 percent is solely the
22 allocation to mortgages.
23 Q. Right.
24 A. So the nonfixed income and the equity

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1 investments make up the balance -- the
2 remaining of the fixed income, I should
3 say.
4 Q. Fixed, nonfixed, which includes equity?
5 A. That is correct.
6 Q. Now you earlier testified that loss on a
7 loan that doesn't close is a pricing
8 aspect. Could you explain that to me?
9 A. Pricing refers to not only the activity
10 that we do on new deals but activity as it
11 relates to lines of business, and we meet
12 monthly. Collections of lines of business
13 have asset managers, and the lines of
14 business folks present in these meetings,
15 and they view a commitment as in fact a
16 commitment, and that brings its way into
17 the pricing of our liability products.
18 So I view a cancellation or a
19 change in any asset as a pricing issue,
20 because we must make sure that the lines
21 of business are somehow made whole since
22 they will have priced their product under
23 the assumption that all loans close.
24 Q. And what, if any, measures were taken with

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1 respect to this \$32 million loan that
2 didn't close?
3 A. I'm unaware of any specifics relative to
4 this loan without looking it up.
5 Q. And you haven't looked it up in connection
6 with your preparation for this deposition?
7 A. I have not.
8 Q. Now you say this is the only loan that
9 didn't close as far as you -- to the best
10 of your knowledge; is that right?
11 A. That is correct.
12 Q. Would it be your best estimation that no
13 action was taken by any of the lines of
14 business when they learned that the loan
15 wouldn't close?
16 MR. POPEO: Objection.
17 You can answer the question.
18 A. No. It is not my estimation that no
19 action was taken. 32 million is a
20 significant loan relative to our loans, so
21 my estimation is that action was taken.
22 I'm just not sure what that action may
23 have been.
24 Q. Okay. And you don't know how those lines

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1 of business were notified that they should
2 take action? Am I right about that?
3 A. That's correct.
4 Q. Okay.
5 A. I do not know how they were notified.
6 Q. In fact, whether or not they were
7 notified?
8 A. That is correct.
9 Q. You don't know whether or not they were
10 notified?
11 A. That is correct.
12 Q. Are you aware of any hedge losses that
13 were associated with this loan?
14 A. Any specific hedge losses on this loan?
15 Q. Correct.
16 A. I'm not aware of.
17 Q. Is it your testimony that the hedge, if
18 any, would occur at the portfolio level?
19 A. That is correct. The -- all of the assets
20 and all of the liabilities are looked at
21 periodically, some segments weekly, some
22 monthly, to rebalance, at which time
23 portfolio hedges are put on to correct for
24 it. Now that includes all new commitments

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1 made, all new liabilities, changes in
2 their cash flows. So there are numbers of
3 factors that go into the decision to put a
4 portfolio-level hedge on.
5 Q. And would it be accurate to say that the
6 learning that the \$32 million loan on the
7 Avonel project was not going to occur had
8 no effect on the portfolio-level hedging?
9 MR. POPEO: Objection.
10 A. I wouldn't say that that knowledge would
11 have no effect. It would be yet another
12 piece of information exactly like the
13 commitment that there would now be no
14 anticipated flow coming in, and they would
15 factor in that assumed lack of cash flow.
16 Q. And do you know what, if any, effect that
17 had on -- what, if any, cost that was?
18 A. I don't know what that cost may have been.
19 No.
20 Q. Whether there was a cost or whether there
21 wasn't a cost?
22 A. Yes, yes. I'm unaware.
23 Q. So going back to your viewing, if not
24 reviewing, the calculation of lost

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1 opportunity of \$4.7 million, you do not
2 believe that is an accurate calculation?
3 Do I have that right?
4 A. No, you don't. I believe the calculation
5 that was shown is accurate for what it is
6 representing.
7 Q. I see.
8 A. I believe it, in my estimation, it is a
9 conservative estimate of the actual loss,
10 since it assumes the reinvestment would be
11 at a 10-year treasury, and that is not our
12 current marginal investment.
13 Q. Do you have any idea why the 10-year
14 treasury was chosen as the number -- as
15 the number to deduct from the rate of the
16 deal?
17 A. I don't know why the 10-year treasury was
18 chosen. It may have been the basis for
19 which the spread on the commitment was
20 tied to, but I do not know for a fact why
21 the 10-year treasury was chosen.
22 Q. And what do you mean by that, the spread
23 on the commitment?
24 A. Many deals have, when they commit, will

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1 set to a spread over a treasury rate at
2 which they will fund.
3 Q. Can you explain that? You mentioned that
4 at the outset of your testimony about
5 treasury and LIBOR. Could you explain to
6 me what that setting process is?
7 A. When we have a deal in which we say the
8 spread -- the commitment includes a spread
9 set, so one has not agreed to a defined
10 rate, but they have agreed, I will use an
11 example, to 150 basis points over the
12 10-year treasury as published three days
13 prior to funding, so that somebody would
14 know at that point, we are going to look
15 up the 10-year treasury date three days
16 prior to funding and add 150 basis points
17 to it. That will be the coupon rate on
18 the deal.
19 Q. And to the best of your knowledge, that
20 spread set was not agreed to in connection
21 with this transaction?
22 MR. POPEO: Objection.
23 A. I don't know whether there was a spread
24 set or a rate that was agreed to in this

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1 transaction.
2 Q. Okay. You said that you had looked at the
3 loan application, but if you were to -- in
4 connection with your other calculations
5 that you were doing. Did you notice
6 whether or not there was a rate commitment
7 or a spread set?
8 A. I didn't.
9 Q. Assume for the purposes of my question
10 that it was a rate commitment. Can you
11 offer me an explanation as to why the
12 10-year treasury was used as the number to
13 subtract from the rate?
14 A. My supposition --
15 MR. POPEO: Objection.
16 A. -- is that when somebody was arriving at
17 that rate the benchmark they were
18 employing at that time was in fact a
19 10-year treasury.
20 Q. So when the someone who was calculating
21 the rate at which this mortgage would be
22 lent, they were using a 10-year treasury
23 as the basis for that; is that right?
24 A. That is what I am supposing, yes.

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1 Q. Okay. But other than that supposition,
2 and I don't mean to minimize it, but other
3 than that supposition, you have no idea
4 why the 10-year treasury was used?
5 A. No. Without asking the person who did the
6 calc why they chose the ten-year, I do not
7 know.
8 Q. And do you know who did the calculation?
9 A. I do not know who actually did the
10 calculation, no.
11 Q. Do you know what interest rates John
12 Hancock used for mortgages in June of
13 2005?
14 MR. POPEO: Objection.
15 You may answer.
16 A. No, I don't. I would have to go back and
17 look up what we had at the time.
18 Q. And that answer would be the same up to
19 and including today?
20 A. That is correct.
21 Q. Do you know the rate, interest rate, at
22 which John Hancock is making -- made loan
23 commitments in June of 2005?
24 MR. POPEO: Objection.

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1 A. No. All of those numbers, I would have to
2 go back and look, and there is -- there
3 are two reasons for that. One is they
4 vary greatly based on the term of the
5 loan, the quality of the loan, and the
6 type of property. And the second is that
7 the majority of my analysis is based upon
8 spreads as opposed to overall rates.
9 Q. When you said that 20 to 28 percent of
10 your assets are kept in commercial -- in
11 mortgages, did you mean agricultural and
12 commercial?
13 A. Yes. And let's clarify. It is not -- it
14 is the target for the company is 20 to
15 28 percent. We are falling shy of that
16 target. It is a total mortgage target
17 that includes both agricultural and
18 commercial mortgages.
19 Q. And can you estimate or can you tell me
20 what the portion is attributable -- the
21 target for commercial?
22 MR. POPEO: How many are
23 commercial versus how many are
24 agricultural?

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1 MR. SCHER: Yes. What
2 percentage.
3 A. Percentage terms, I would have to do the
4 math backwards, but in general, we have
5 got twelve billion of commercial mortgages
6 and we have got about four billion of
7 agricultural.
8 Q. Okay. And --
9 A. So three quarters of it is agricultural --
10 is commercial.
11 Q. And how far short are you in terms of
12 commercial mortgages?
13 A. They do not set a target for the
14 underlying asset class, simply the overall
15 mortgage asset class.
16 Q. So all you have is the 20 to 28 percent?
17 A. That is correct.
18 Q. And you can't tell me whether it is all
19 agricultural that is short or it is all
20 commercial or a combination of?
21 MR. POPEO: Objection.
22 A. The target is set at the total level. We
23 are far enough behind the target that it
24 must be a mix of the two.

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1 Q. Okay. Is it accurate to say that John
2 Hancock invested funds in corporate bonds
3 in 2005?
4 A. That would be an accurate statement.
5 Q. Is there any reason why it could not have
6 invested another \$32 million in corporate
7 bonds?
8 MR. POPEO: Objection.
9 A. I'm unaware of exactly how the
10 mortgage-to-bond relationship goes. Money
11 -- when we do not do a mortgage, it still
12 is sitting in cash. How money gets
13 released from cash to be allocated to the
14 bond group, I am unclear on. But I can
15 tell you that regardless of the asset
16 class we go into, there is the time demand
17 for individuals to make the trades as well
18 as finding the appropriate assets, and
19 they may have very well -- I do not know
20 their targets -- they may have already
21 been above the target that is set for
22 public bonds.
23 Q. But you do not know that?
24 A. I do not know that.

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1 Q. So you don't know of any reason why the
2 \$32 million in June of 2005 could not have
3 been invested in corporate bonds?
4 MR. POPEO: Objection.
5 Q. Sitting here today, you don't know of any
6 reason?
7 A. Right. I don't know any reason why that
8 \$32 million wasn't -- was or was not
9 invested in any other asset class.
10 Q. Okay. And you don't know whether -- do
11 you invest in commercial mortgage-backed
12 securities?
13 A. We invest in the 144A class of commercial
14 mortgage-backed securities.
15 Q. And is there any reason why the
16 \$32 million could not have been invested
17 in commercial mortgage-backed securities?
18 MR. POPEO: Objection.
19 A. We have -- we have specific targets which
20 we have been unable to meet and
21 underwriting standards even for our
22 commercial mortgage-backed securities that
23 are 144As.
24 Q. Were you testifying that you are over-

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1 invested in high-grade corporate bonds?
2 A. No, I was not testifying as to that.
3 MR. POPEO: Objection.
4 Q. You said that was a possibility?
5 MR. POPEO: Objection.
6 A. I am unaware of where they stand relative
7 to their target.
8 Q. You do you know what the expected rate of
9 return for John Hancock is for the next 10
10 years?
11 A. No, I do not.
12 Q. It does have expected rates of return,
13 doesn't it?
14 A. We forecast returns for a three -- well,
15 we forecast in my case spreads -- I'm not
16 exactly sure how all the asset managers
17 report theirs; it may be a spread; it may
18 be a return -- for a three-year window.
19 We do not forecast for a ten-year window.
20 Q. And why is that?
21 A. Three years is viewed as the most valuable
22 of the projections. Beyond that, they are
23 viewed as suspect.
24 Q. And suspect because they're?

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1 A. Too far out in the future to be reliable.
2 Q. Is there a risk associated with mortgage
3 loans?
4 A. There is a risk associated with any
5 investment. So, yes, there is a risk
6 associated with a mortgage loan.
7 Q. And is that risk included in your
8 opportunity cost calculation?
9 A. In any specific opportunity cost
10 calculation, there would not be a risk
11 per se. There are many risks with
12 mortgages. We include risks in some of
13 our pricing, such as default, but we don't
14 include a risk of a loan not closing.
15 Q. Other than your observation with respect
16 to the calculation of that lost
17 opportunity, did you note any other, other
18 than what you have already testified to,
19 did you note any other deficiencies or any
20 other questions you had about that
21 calculation?
22 MR. POPEO: Objection.
23 A. No. But I was also not asked to review
24 that calculation.

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1 Q. Okay. In your estimation, is there any
2 difference between the amount -- the lost
3 opportunity, the calculation of the lost
4 opportunity and the loan actually going to
5 maturity and being fully repaid?
6 MR. POPEO: I object to the form
7 of the question.
8 THE WITNESS: Yes.
9 A. I'm not sure I am following your question.
10 Q. In other words, in terms of the
11 calculation of the opportunity loss, is
12 that amount larger, greater, or the same
13 as the opportunity, the value to John
14 Hancock of the loan being made and being
15 repaid to its maturity?
16 MR. POPEO: Objection.
17 A. If the loan came on the books at its
18 regular 32 million and paid us right
19 through the expected maturity at the end
20 with no other defaults or any other lost
21 cash flows, that opportunity cost simply
22 reflects what the alternative investment
23 in a 10-year treasury would yield us. It
24 does not reflect the loss to the company,

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1 which is actually an asset earning what
 2 the full yielding mortgage was, since we
 3 have targets that we have to make, and we
 4 are still far shy of the target. So while
 5 it reflects what we have lost down to a
 6 treasury as an assumed alternative
 7 investment, that is not the alternative
 8 investment we would like to have. We
 9 would like to have a commercial mortgage
 10 on the books that is yielding that.
 11 Q. Well, but why wouldn't you like to have,
 12 if the commercial mortgage was not
 13 available, why wouldn't you like to have
 14 the next highest yielding asset?
 15 MR. POPEO: Objection.
 16 A. Presumably the next highest yielding asset
 17 also has a target which they are trying to
 18 meet. In theory, cash would be your
 19 default asset when you have to fall short
 20 in all of your other targets.
 21 Q. And that is the theory that you would
 22 apply to your calculation of the loss in
 23 this case?
 24 A. That is correct.

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1 Q. Now is it accurate to say that there was
 2 no lost opportunity cost from the time of
 3 the commitment to the time that the loan
 4 was not funded?
 5 MR. POPEO: Objection.
 6 Q. In other words, from August of 2004 until
 7 August of 2005, is it accurate to say that
 8 you do not know of any loss that John
 9 Hancock suffered?
 10 MR. POPEO: Objection.
 11 MR. SCHER: What is the basis?
 12 MR. POPEO: I am not going to go
 13 through the basis, Howard. You are taking
 14 too much time. I object to the form.
 15 MR. SCHER: What is the basis?
 16 MR. POPEO: I object to the
 17 form.
 18 BY MR. SCHER:
 19 Q. Okay. Go ahead.
 20 A. I'm not sure how to properly answer your
 21 question. There is no quantified dollar
 22 amount for any given period before a loan
 23 is closed, but the assumption built into
 24 all of our pricing, both on the asset side

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1 and the liability side, is that all loans
 2 will in fact close.
 3 Q. Okay. But that's not quite my question.
 4 It is my fault. Let me see if I can
 5 restate it.
 6 From August of 2004 when the
 7 loan commitment was presumably made until
 8 John Hancock became aware that the loan
 9 would not close, did John Hancock suffer
 10 any loss of which you're aware?
 11 A. I'm not aware of any loss simply because I
 12 am making the assumption that the loan in
 13 fact would still close.
 14 Q. Right. But now from August -- from the
 15 time that John Hancock learned that the
 16 loan would not close, you have testified
 17 with respect to your calculation --
 18 A. Yes.
 19 Q. -- of the lost opportunity; is that
 20 correct?
 21 A. That is correct.
 22 Q. Are you aware of the rate lock in
 23 connection with a forward commitment?
 24 A. In connection with this specific

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1 commitment?
 2 Q. Yes.
 3 A. No.
 4 Q. Are you familiar with the process under
 5 which a -- when a rate lock is executed by
 6 John Hancock?
 7 A. Yes. I -- within my group, rate locks are
 8 done, and when there is a commitment and
 9 the rate is to be locked, someone in my
 10 team actually goes and looks up the basis
 11 for that rate lock, whether it be the
 12 LIBOR or the treasury and the agreed-upon
 13 spread, and actually locks and sets the
 14 rate for that deal and communicates such
 15 rate lock.
 16 Q. To whom does that person communicate the
 17 rate lock?
 18 A. To the investment officers, to the folks
 19 within the asset liability management
 20 area, the global investment strategy area,
 21 myself, and I would have to look at the
 22 full distribution list to see how far a
 23 rate lock is communicated.
 24 Q. And is the notification process the same

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1 as the ticket -- the trade ticket process?
2 A. It is all an e-mail notification process.
3 Q. So it is not the trade ticket? It is --
4 or is it the same?
5 A. It is possible that it could be all in one
6 document.
7 Q. Okay. In this case, the interest rate
8 lock was accomplished on August 1, and the
9 loan commitment approval process did not
10 occur until August 17. Would that suggest
11 to you that there would be separate trade
12 tickets?
13 A. That would not suggest to me separate
14 trade tickets. A trade ticket is produced
15 at time of commitment, which is when we
16 allocate funds. We would have the -- the
17 dates prior to that is when it is listed
18 as rate locked but not yet approved.
19 Q. So then there would be no economic
20 consequence to the rate lock; is that
21 right?
22 MR. POPEO: Objection.
23 A. Well, I'm not sure I completely follow
24 your question. The rates can be locked

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1 basically at any point from the beginning
2 right up through the commitment. We view
3 the deal as a committed deal which we
4 allocate at the time of commitment.
5 Q. I see. Is there a cost associated with
6 the rate lock to John Hancock?
7 A. There is an exposure to John Hancock of
8 movements in interest rates from the point
9 in time any rate is locked until approval
10 is done.
11 Q. Is that exposure any different than the
12 exposure you described to me at the
13 portfolio level with respect to hedging
14 interest rates?
15 MR. POPEO: Objection.
16 A. The exposure would be changes in both the
17 underlying interest rates, which can be
18 hedged, as well as our spreads, which get
19 added on top of interest rates, which we
20 cannot hedge.
21 Q. That is at the portfolio level, though?
22 Am I right?
23 A. The analysis is done at the portfolio
24 level. That is correct.

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1 Q. Is there any hedge associated with this
2 loan at the time of the circle -- of the
3 interest rate loan?
4 A. I'm unaware of any hedge put on
5 specifically for this loan.
6 Q. Okay. Is that done routinely or --
7 A. The standard practice is to do
8 portfolio-level hedging as opposed to
9 individual-deal hedging.
10 Q. All right.
11 A. It doesn't mean that occasionally
12 individual deals are not hedged, but the
13 practice is portfolio-level hedging.
14 MR. SCHER: Off the record.
15 (Discussion off the record,
16 followed by a recess taken at
17 3:59 p.m.)
18 (Recess ended at 4:04 p.m.)
19 BY MR. SCHER:
20 Q. After the rate would lock and before the
21 commitment is made, I think you described
22 to me that the lines of business are given
23 notification as well as ALM?
24 A. No, I don't think that is what I

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1 described.
2 Q. I'm sorry.
3 A. We -- we internally -- categorize deals
4 like that as rate locked but not yet
5 approved.
6 Q. And if the loan is not approved, what
7 happens?
8 A. If the loan is not approved or committed
9 to, it simply disappears from that list,
10 because we don't view it as, if you will,
11 a real asset at that point.
12 Q. Is there an opportunity cost to John
13 Hancock for the period of time from the
14 rate lock to the nonapproval of the loan?
15 MR. POPEO: Objection.
16 A. Without going back and looking at all the
17 stats, I cannot think of a single loan
18 that was rate locked and not ultimately
19 approved. We do not like to rate lock
20 loans unless we feel they will be fully
21 committed to, because we would be exposing
22 ourselves to economic costs should the
23 approval not go through.
24 Q. So there is an incentive to rate lock

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1 loans that are going to be approved?

2 A. No. I wouldn't say that either, because

3 rate locking exposes us to a loss in

4 either direction from that point. There

5 is an incentive to not rate lock a loan

6 until you are either certain it will be

7 approved or until you are close to

8 approval.

9 Q. Okay. So -- and is that the policy of

10 Manulife or John Hancock?

11 A. We do not have a written policy, but the

12 expressed policy within the department is

13 that no loan should be rate locked if it

14 does not feel that it could be approved

15 within a short period of time, and that

16 short period is undefined.

17 Q. And where does that understanding come

18 from?

19 A. That comes from the head of the mortgage

20 operation area, Ivor Thomas, who oversees

21 both Canadian and U. S. mortgages.

22 Q. How do you assure that this policy is

23 followed, that is that rate locks are not

24 made on loans that are not fully

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1 committed?

2 MR. POPEO: Objection.

3 A. I'm not assuring. It is an unwritten

4 policy. It is a general understanding.

5 And as we go through our pipeline

6 meetings, which happen every two weeks,

7 investment officers are reminded that they

8 shouldn't agree to a rate lock if they

9 don't feel they can get it approved

10 quickly after that.

11 Q. These are called pipeline meetings?

12 A. We have pipeline meetings that discuss all

13 the deals that are under consideration.

14 Q. That are in the pipeline?

15 A. That is correct.

16 Q. And do you recall that the Avenel

17 \$32 million loan was in the pipeline at a

18 pipeline meeting?

19 A. I don't recall that. No.

20 Q. Is it literally -- Mr. Thomas chairs these

21 pipeline meetings?

22 A. No. He does not. He oversees all

23 mortgage operations, both in the U. S. and

24 in Canada. And in the U. S. Bill McPadden

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1 oversees the U. S. pipeline meeting. I'm

2 not sure who oversees the one in Canada.

3 Q. And but you know that it is Mr. Ivor

4 Thomas' policy that rate locks should not

5 be made on loans unless they're going to

6 be committed to?

7 A. I know it is Mr. Thomas' desire that no

8 rate lock be entered into if they don't

9 feel that they can get the approval

10 shortly thereafter because we are both

11 exposed to a real cost as well as a PR

12 issue. If the rates were to go up after

13 we rate locked and he did not want the

14 loan for an underwriting purpose, it would

15 appear we are walking away from a loan

16 simply because rates rose. So there are a

17 number of reasons that he has the policy,

18 an unwritten policy, that we do not rate

19 lock until we are close to approval.

20 Q. Are there circumstances where a yield

21 maintenance calculation would be required

22 of a borrower at the time of a rate lock?

23 MR. POPEO: Objection.

24 A. In any new commitment that is part -- that

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1 contains entirely or partially a

2 refinancing of an existing commitment,

3 what we refer to as a rollover, there

4 could be yield maintenance associated with

5 that old loan that could be factored into

6 the new loan.

7 Q. So it is only in connection with rollovers

8 that a yield maintenance calculation would

9 be applicable; is that right?

10 MR. POPEO: Objection.

11 A. My understanding of what you are referring

12 to as yield maintenance, which is making

13 us hold to the loan documents on a prior

14 loan, the only time they apply in a new

15 loan is when there is a rollover of

16 existing finances.

17 Q. Is there an allocation of investment

18 expenses to mortgage loans by John

19 Hancock?

20 A. This is an allocation of investment

21 expenses to different lines of business.

22 I am not aware of how low they go, if they

23 go to the given asset class level or only

24 at the investment total level.

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1 Q. And do you know what those expenses are
2 with respect to mortgage loans?
3 A. I don't know the total of what they would
4 allocate back to us as investment
5 expenses.
6 Q. Are they measured in basis points or --
7 A. I may be misinterpreting some of your
8 questions. There are a number of costs
9 that are associated with and called
10 investment expenses, and they would
11 include all of the costs associated with
12 originating the loans, closing the loans,
13 servicing the loans, as well as our field
14 offices, as well as any of the legal or
15 correspondent networks we use.
16 Now that would be the sum total
17 of all the expenses that would then go
18 into the total which gets allocated, but
19 I'm unaware of the current processes for
20 allocating those back to a line of
21 business.
22 Q. Does John Hancock have a set aside for
23 mortgage loan impairment?
24 A. We have two elements relative to

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1 impairment, so I want to be certain that
2 we're clear.
3 With each loan we do, we build
4 in an assumed level of default for the
5 overall quality level of that loan. That
6 is what we assume a portfolio made up of
7 that quality loans will lose.
8 We actually have, different from
9 that, but it would encompass that, is what
10 any actual impairments are that have been
11 taken on loans. That is a real impaired
12 value, a real figure, that in theory
13 should be part of that assumed level of
14 default.
15 Q. And do you know what those amounts are?
16 MR. POPEO: Objection.
17 A. The amounts in basis points that we hold
18 on every loan would vary based on each and
19 every commitment, based on its term and
20 its quality.
21 Q. Is that described in the loan approval?
22 A. No. That is not described in the loan
23 approval.
24 Q. Where is that?

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1 A. That is part of our internal proprietary
2 pricing matrix where we identify what our
3 estimated default level is.
4 Q. Here is a very difficult question. Is MLI
5 Manulife?
6 MR. POPEO: In what context?
7 Q. Do you want to see a document?
8 A. No. The reason I am confused by the
9 question a bit is there are many MLIs.
10 MLI is Manufacturers Life Insurance
11 Company, but we also have the John Hancock
12 Mutual Life Insurance Company --
13 Q. I see.
14 A. -- which is occasionally referred to
15 internally as MLI.
16 Q. All right.
17 A. So there is a great deal of confusion when
18 just using the term MLI.
19 Q. Does MLI have a rating system and John
20 Hancock have rating systems for evaluating
21 mortgages?
22 A. Yes. All of our mortgages are rated and
23 evaluated.
24 Q. And MLI has a rating system?

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1 A. We are using the same rating system for
2 our mortgages.
3 MR. POPEO: And using MLI
4 synonymous with Manufacturers Life
5 Insurance?
6 MR. SCHER: Right.
7 THE WITNESS: Thank you.
8 Q. Right?
9 A. Yes.
10 Q. Okay. Are you aware of any drop in
11 interest rates between the execution of
12 the commitment, at the time of the
13 commitment --
14 MR. POPEO: And?
15 Q. -- and August of 2004?
16 MR. POPEO: Objection. You may
17 answer.
18 A. Interest rates fluctuate every day. Over
19 that course of time, they certainly rose
20 and they certainly dropped on any given
21 day.
22 Q. Okay.
23 MR. SCHER: Mark this.
24 (Interest Rate Circle

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1 Notification, production
 2 numbers JH 01109 through 01117
 3 marked exhibit number 2 for
 4 identification.)
 5 BY MR. SCHER:
 6 Q. I will show you what I have had marked as
 7 Uzdevinis 2.
 8 (Handing exhibit number 2 to the
 9 witness.)
 10 Q. This is a copy of the interest rate circle
 11 notification, JH 1109 Bates stamped at the
 12 bottom through 1117. Do you have that in
 13 front of you?
 14 A. 1109.
 15 Q. How far do you go?
 16 A. There is 1109. Not 1117.
 17 Q. No. Through. I am sorry.
 18 A. I am sorry. Yes. 1117. Yes.
 19 Q. Okay. And the question I have for you on
 20 this is: Are you familiar with this form?
 21 A. Yes, I am.
 22 Q. And is the proposed allocation what you
 23 were describing to me that is done in your
 24 department with respect to the allocation

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1 of interest rate locks?
 2 A. Yes.
 3 Q. Can you tell me what those lines of
 4 business are? Can you translate those
 5 abbreviations?
 6 A. Sure. The first one, GBRE, is the
 7 guaranteed benefit separate account
 8 reinsurance.
 9 The second one is group
 10 insurance.
 11 The third is retail long-term
 12 care.
 13 The fourth we refer to as the
 14 remainder block.
 15 The fifth is the open segment.
 16 IPLICo stood for our subsidiary
 17 that was IPLICo.
 18 IQA is individual qualified
 19 annuities.
 20 And REFA was reinsurance of the
 21 fixed annuities.
 22 Q. Now is this proposed allocation decided
 23 upon?
 24 A. We determine allocation at the time of

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1 commitment based upon the estimated
 2 investment demand of each and every
 3 segment available to us, if I refer to
 4 these as segments. Each of the segments
 5 has an expressed investment demand
 6 provided to us by the time Global
 7 Investment Strategy, GIS, that indicates
 8 what their demand is over the coming 16
 9 months. We look at the segments, demands
 10 as well as any restrictions placed on
 11 those segments and allocate at the time
 12 pro rata based on a segment's available
 13 investment demand for mortgages.
 14 Q. You said this was at the time of
 15 commitment, but, of course, this is an
 16 interest rate circle notification. So did
 17 you -- is this proposed allocation
 18 something -- well, how is this proposed
 19 allocation, is it performed the same way
 20 you just described it at the time of the
 21 interest rate?
 22 A. Yes, it is.
 23 Q. So you would agree that the proposed
 24 allocation at the time of the interest

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1 rate circle notification is the same as
 2 when the commitment is made?
 3 MR. POPEO: Objection.
 4 A. The basis of the allocation is at the time
 5 of commitment. Commitment is viewed as
 6 when we have approval. The approach that
 7 we take and the unwritten policy is that
 8 we should not be rate locking a deal until
 9 we know that the deal is likely to go
 10 through. The implied assumption is that
 11 any deal we rate lock will in fact be
 12 committed to. So the approach is the
 13 same, and we use -- the information is the
 14 same.
 15 Q. Who makes this proposed allocation
 16 decision?
 17 A. That is done within portfolio management,
 18 within my group --
 19 Q. And --
 20 A. -- based upon the information that we are
 21 given relative to each segment's
 22 investment demand.
 23 Q. For the ensuing 16-month period?
 24 A. That is correct.

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1 Q. Now what happens at the end of the
2 16-month period?
3 A. It is a rolling 16-month period we are
4 provided. So each month we make
5 allocations on all new commitments based
6 on the then current investment demand for
7 commercial mortgages by segment.
8 Q. At the expiration of the 16-month period,
9 assuming the commitment has been converted
10 into a taken-down loan, what happens? Is
11 there a new allocation decided upon?
12 A. I may be misinterpreting your question. A
13 loan is allocated once and only once. It
14 is assumed that it will go on the books in
15 the manner that it is allocated.
16 The investment demand figures
17 that are provided to us are meant to be
18 reflective of new investment activity
19 needed. Once we say a deal has been
20 committed to, it is assumed that deal will
21 go on the company's books and no further
22 activity is needed on that deal.
23 Q. Okay. Now when you say for 16 months
24 forward, why -- does it have something to

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1 do with when this loan is going to close?
2 Is that what you are looking at?
3 MR. POPEO: Objection. First of
4 all, the testimony is rolling 16 months.
5 You may answer the question.
6 THE WITNESS: Yes.
7 A. It is nothing to do with this specific
8 loan. Investment demand is always
9 produced in a rolling 16-month window to
10 avoid any seasonal blips that given lines
11 of business will have with when they may
12 experience contractual cash flows.
13 Q. I see. So are you looking backward 16
14 months or forward 16 months?
15 A. We are looking forward only.
16 Q. Okay. And you are taking the information
17 from the lines of business as to what
18 their demand will be for investments of
19 this type?
20 A. I am given a total investment demand
21 number by asset type. I do not say -- I
22 do not contact the lines of business.
23 Global Investment Strategy provides
24 investment demand. They coordinate with

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1 each of the lines of business and each of
2 the asset managers to know what has
3 already been -- when it has already been
4 committed to, it is off the books, it is
5 assumed to fund. It is no longer a
6 component of investment demand.
7 So we are given updated numbers
8 that reflect the current information of
9 both liability flows and needed asset
10 flows to arrive at a demand figure by
11 asset category. So I am provided a
12 commercial mortgage demand number, which I
13 will try to find assets to allocate to.
14 Q. And this one line of business,
15 "remainder," what is that?
16 A. The remainder block is a function of the
17 demutualization. We had a closed block of
18 business, and the balance of those assets
19 went into -- of the liability insurance
20 policyholders went into what was called a
21 remainder block.
22 Q. Is any of this, any of this allocation, to
23 cash or cash equivalent?
24 MR. POPEO: Objection. The

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1 allocation that we are looking at on the
2 form?
3 MR. SCHER: Yes.
4 A. This is an allocation of this mortgage.
5 Q. Right.
6 A. So it is an allocation of a mortgage.
7 Q. So the entire mortgage is allocated to
8 lines of business?
9 A. Completely allocated to a line of
10 business.
11 Q. Now this shows an average life of the
12 mortgage as 9.29. Can you tell me what
13 that means?
14 A. That means the present value of the
15 principal cash flows on this loan would
16 equate to a loan that would be the
17 equivalent of having an asset on our books
18 that had a zero payout at the year 9.29 in
19 terms of principal flows.
20 Q. Given the fact that this loan was not to
21 fund for -- it could -- it might not fund
22 for a year, how does that -- is that
23 average life calculated?
24 A. Any average life is calculated on the

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1 anticipated flows associated with that
2 deal. So one would take all of the flows
3 -- and they would begin on the closing
4 date. They would begin August 1, 2005,
5 and they would go out through maturity.
6 They would be discounted back to create
7 the average life.
8 (The witness pointing to exhibit
9 number 2.)
10 MR. POPEO: Just to be clear,
11 the witness is referencing the anticipated
12 closing date on the document JH 01109.
13 MR. SCHER: Where is that?
14 MR. POPEO: Midway down the
15 page.
16 MR. SCHER: Oh, I'm sorry. Yes.
17 BY MR. SCHER:
18 Q. And what is the duration 6.76? What does
19 that mean?
20 A. The duration is the present value of both
21 principal and interest cash flows, and it
22 is the measure by which we balance -- we
23 being the John Hancock -- balance our
24 assets and our liabilities on each asset's

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1 and liability's duration.
2 Q. And the next is the LTV. That is the
3 loan-to-value ratio?
4 A. Yes. That is correct.
5 Q. And what is that? Is that an
6 underwriting?
7 A. It is an underwriting term, loan to value.
8 It is one of the parameters by which we
9 must measure loans.
10 Q. The next is the debt service coverage?
11 A. That is correct. Another calculation.
12 Q. Is this form a John Hancock form?
13 A. Yes.
14 Q. Rather than a Manulife form?
15 A. It is a John Hancock form.
16 Q. And so it is missing the 10 percent
17 constant underwriting?
18 MR. POPEO: I object to the form
19 of the question.
20 A. I don't follow you.
21 Q. Do you know what the 10 percent constant
22 factor is?
23 A. I'm not -- no.
24 Q. No?

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1 A. No, I do not.
2 MR. SCHER: Mark this.
3 (Multipage document headed John
4 Hancock Life Insurance Company,
5 production numbers JH 00405
6 through 00425 marked exhibit
7 number 3 for identification.)
8 BY MR. SCHER:
9 Q. I will show you what I have had marked as
10 Uzdavinis exhibit 3.
11 (Handing exhibit number 3 to the
12 witness.)
13 Q. And on the first page is Bates stamped
14 JH 00405. There is a copy for your own.
15 You can look on with counsel if you would
16 like.
17 At the bottom of the page, it
18 indicates that "Funding at 80 percent
19 occupied versus MLI requirement of
20 90 percent...."
21 A. I see that.
22 Q. And that MLI is referring to Manulife?
23 A. I am assuming it is referring to Manulife.
24 Yes.

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1 Q. Now on page 411, JH 00411, there is a
2 section called "Lines of Business
3 Allocations - Voted Section."
4 A. I see that.
5 Q. Can you tell me what that is?
6 A. I don't put these documents together, but
7 I am assuming that would represent the
8 allocation that we make to each one of
9 those lines of business for the full
10 amount of the loan.
11 Q. Can you describe to me exactly what this
12 trade ticket looks like?
13 A. Well, what I am referring to as a trade
14 ticket is actually your circle
15 notification.
16 Q. There we go. So --
17 A. That may be simpler.
18 MR. POPEO: We call that a
19 wakeup moment.
20 MR. SCHER: Thank you.
21 Q. It is this interest rate circle
22 notification which -- is it this form
23 itself, the first page of it, or all of
24 it?

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1 A. The first page of it is what is e-mailed
2 out to let people know this is the
3 allocation that will be coming to them.
4 Q. And is there a cover e-mail that transmits
5 this interest rate circle notification, or
6 is it this document itself?
7 A. This document is attached in an e-mail.
8 The topic of which -- each -- each loan is
9 individually sent out with its loan number
10 as the subject.
11 Q. Okay.
12 A. In this case, it would be commitment
13 number 6518467.
14 Q. That would be the reference, and it would
15 be sent to each of the lines of business
16 and attached to which -- I am sorry?
17 A. I would have to look at the full
18 distribution list. I do not send it out.
19 Q. Okay.
20 A. I know it is sent to the investment
21 officers, to the ALM folks, to myself. I
22 am not exactly sure if each segment
23 receives it directly or indirectly through
24 another party. I would have to look at

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1 the actual distribution list.
2 Q. So do I understand correctly whether the
3 loan is a forward commitment -- I am sorry
4 -- what loan is a lock or a signing of
5 a --
6 MR. SCHER: Strike that.
7 Q. This interest rate circle notification is
8 sent generally speaking at the time of
9 commitment; is that right?
10 A. It is sent always at the time of
11 commitment. There may or may not be a
12 specific interest rate indicated based on
13 whether or not the rate has been locked or
14 a spread has simply been set for rate lock
15 at a future time.
16 Q. If there is -- are there instances where
17 there are more than one interest rate
18 circle notification, that is at the time
19 of the circle lock -- at the time of the
20 interest rate lock and then again at the
21 time of the commitment?
22 A. There are instances where the interest
23 rate circle notification is revised to
24 fill in information that was not present

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1 at the initial loan or potentially
2 incorrect.
3 Q. Okay. So is it your testimony that there
4 should have been an interest rate circle
5 notification which would include the NA
6 categories of information or at least --
7 A. No. That is not my testimony.
8 Q. All right.
9 A. I don't know whether or not there was. I
10 do not know whether or not there was a
11 rollover of an existing loan or what the
12 characteristics of this particular field
13 are. If it existed, there should have
14 been a revised circle sent out that
15 indicated that.
16 Q. Okay. Well, it says "New Money" in the
17 "Type of Transaction," so let's assume
18 there was no rollover. What I am trying
19 to understand is is it your testimony that
20 this form, interest rate circle
21 notification, the first page of this
22 exhibit, Uzdavinis 2, was sent by e-mail
23 to at least ALM and that no subsequent
24 interest rate circle notification was sent

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1 on this loan?
2 MR. POPEO: Objection.
3 A. I can't -- I can tell you I know one was
4 sent. Whether or not subsequent ones were
5 sent or not, I cannot tell you. I would
6 have to actually go back and talk to the
7 person who sends them to see if he had any
8 reason to revise any piece of information
9 on this.
10 Q. In any event, you don't know of any
11 notification to anyone that would say,
12 "Remember that interest rate circle
13 notification? Forget about it. The loan
14 is not closing?"
15 MR. POPEO: Objection.
16 A. I don't recall any notification of that,
17 but that -- of the loan not closing, but
18 that may very well have happened, and I
19 may just be unaware of it.
20 Q. There is certainly no form for such an
21 event, is there?
22 A. I am unaware of any form. I am unaware of
23 a loan ever having not closed that was
24 committed to.

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1 MR. SCHER: Off the record.
 2 (Discussion off the record.
 3 followed by a recess taken at
 4 4:36 p.m.)
 5 (Recess ended at 4:47 p.m.)
 6 MR. SCHER: Mark this.
 7 (John Hancock Cash Balances -
 8 JHLICO, production numbers
 9 JH 01382 through 01387 marked
 10 exhibit number 4 for
 11 identification.)
 12 BY MR. SCHER:
 13 Q. I show you what I have marked as Uzdevinis
 14 exhibit 4.
 15 (Handing exhibit number 4 to the
 16 witness.)
 17 Q. It is Bates stamped JH 1382 through 1387,
 18 I think.
 19 A. Yes.
 20 Q. Can you tell me what it is?
 21 A. This is a daily cash balance report that
 22 gets produced for the John Hancock Life
 23 Insurance Company as an entity with two
 24 carve-outs, one being the GBSA segment and

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1 the other being the balance of the general
 2 account assets.
 3 The top portion reflects the
 4 total cash balance for the John Hancock
 5 Life Insurance Company, JHLICO as it is
 6 referenced at the top, in millions, at
 7 each one of those points in time. The
 8 first section shows it graphically.
 9 If you continue on, you will see
 10 the numbers that are associated with it.
 11 So for this particular exhibit, the
 12 balances as of June 30, 2005, the John
 13 Hancock Life Insurance Company entity had
 14 715 million that was sitting in cash or
 15 short terms as managed by the money market
 16 operations group.
 17 Q. And I presume -- does this indicate the
 18 return on this?
 19 A. No. This does not indicate the return.
 20 This is simply a picture of the current
 21 cash level at any given point in time.
 22 The other piece of information
 23 that is on here which would relate to the
 24 allocation and the desired allocation is

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1 immediately to the right of the "Current
 2 Cash Balance." You would see our cash
 3 target as a total company is 250 million.
 4 So part of that strategy is to have no
 5 more than 250 million in cash, but at the
 6 current -- at that point in time, June
 7 30th, we were sitting with 715 million in
 8 cash.
 9 Q. Just for the record, you are referring to
 10 JH 1384 and pointing out the entries in
 11 the 715 million being the entry to the far
 12 left-hand column and repeated again in the
 13 third column from the left and then
 14 250 million in that "Cash Target" column?
 15 A. That is correct.
 16 Q. And then the 465 is simply the calculation
 17 of A minus B?
 18 A. That's right. The excess cash relative to
 19 where we wish we could be invested.
 20 Q. And this cash balance -- I will show you a
 21 series of them -- go to -- just end in
 22 what is it? June of?
 23 A. This particular exhibit is June 30, 2005.
 24 MR. SCHER: Mark this.

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1 (John Hancock Cash Balances -
 2 JHLICO, production numbers
 3 JH 01388 through 01391 marked
 4 exhibit number 5 for
 5 identification.)
 6 BY MR. SCHER:
 7 Q. I will show you what I have marked as
 8 exhibit 5.
 9 (Handing exhibit number 5 to the
 10 witness.)
 11 Q. Can you tell me -- that appears to be
 12 similar to the exhibit 4?
 13 A. This is simply the exact same exhibit but
 14 with an effective date of August 31, 2005,
 15 as shown on page 1390, rather than the
 16 June date we just saw.
 17 Q. Okay.
 18 A. And here again the data represents we
 19 currently have a cash balance at that
 20 point in time was up to almost
 21 1.3 billion, a growing deficit to our
 22 target of 250 million.
 23 Q. And can you explain how the change from 4
 24 to 5 occurred? Do you know how that

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1 occurred?

2 A. That is the sum total of all of the

3 activity of all of the investment

4 managers, and that can come about from a

5 whole host of situations. We could have a

6 security that is maturing. The cash would

7 come back to us. It would go into cash.

8 We could have the inability to make

9 investments and not be able to draw down

10 on cash. There could be premiums coming

11 into the company. Any source of cash flow

12 to the company from either the asset side

13 or the liability side would ultimately be

14 reflected in the total cash balance

15 number.

16 Q. And in excess of \$400 million, that the

17 cash balance -- that has increased; is

18 that about right?

19 A. Well --

20 Q. From 4 to 5?

21 A. Yes. June we have gone up from

22 715 million of cash to the end of August

23 when we went up to 1 billion 295 million.

24 Q. Not a penny of that is --

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1 MR. SCHER: No. Strike that.

2 MR. POPEO: Wrong question?

3 MR. SCHER: Yes.

4 (John Hancock Cash Balances -

5 JHVLICO & MIC (formerly

6 IPLICO), production numbers

7 JH 01392 and 01393 marked

8 exhibit number 6 for

9 identification.)

10 BY MR. SCHER:

11 Q. I will mark as exhibit 6 a document that

12 has been Bates stamped JH 1392 and 93.

13 Can you tell me what that is?

14 A. This is a similar exhibit to the one we

15 just looked at, but unlike the first

16 exhibit, which was for the John Hancock

17 Life Insurance Company, this is for the

18 two combined entities John Hancock

19 Variable Life Insurance Company and what

20 we are referring to now as MIC, and I

21 don't recall what that acronym is for, but

22 it is what we used to refer to as IPLICO,

23 Investor Partners Life Insurance Company.

24 Q. And these both end in July of '05?

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1 A. That's right. That is -- let me see --

2 yes, July 29, 2005. That is correct. So

3 this is stating that those particular

4 companies had a current cash balance of

5 167 million for the Variable Life

6 Insurance Company and 21 million for what

7 was formerly IPLICO.

8 (John Hancock Cash Balances -

9 JHVLICO, production numbers

10 JH 01394 through 01397 marked

11 exhibit number 7 for

12 identification.)

13 BY MR. SCHER:

14 Q. And here is 7.

15 (Handing exhibit number 7 to the

16 witness.)

17 A. Okay.

18 Q. And that is JH 1394 through 97. This one

19 shows as of August?

20 A. This is repetitive of exhibit 5.

21 Q. Yes, it is.

22 MR. POPEO: Do you want to leave

23 that marked?

24 MR. SCHER: Yes. It is a

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1 separate Bates stamp. Okay. It appears

2 to be a duplicate.

3 (John Hancock Cash Balances -

4 JHVLICO & MIC (formerly

5 IPLICO), production numbers

6 JH 01398 and 01399 marked

7 exhibit number 8 for

8 identification.)

9 BY MR. SCHER:

10 Q. And this is exhibit 8.

11 (Handing exhibit number 8 to the

12 witness.)

13 Q. This is a duplicate, Bates stamped 1398

14 through 1399; is that right? No, it is

15 not a duplicate?

16 A. This is not a duplicate. This is the

17 Variable Life Insurance Company and IPLICO

18 at the end of August, as opposed to

19 Exhibit 6, the end of July.

20 Q. It shows the current balance and the

21 variance to target?

22 A. For each of those companies at that point

23 in time, yes.

24 Q. And then the second page is cash balances

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1 for two other lines of business?
 2 A. Yes. JH Financial Services and JHRECO,
 3 two small legal entities.
 4 Q. Right.
 5 A. That is correct.
 6 Q. And JHFS CP borrowing balance shows zero?
 7 (Counsel pointing.)
 8 Q. On page 1399?
 9 A. Yes, yes.
 10 Q. What does that mean?
 11 A. I don't know what that means. I don't
 12 allocate to any element of JH Financial
 13 Services.
 14 (John Hancock Cash Balances -
 15 JHLICO, production numbers
 16 JH 01400 through 01404 marked
 17 exhibit number 9 for
 18 identification.)
 19 BY MR. SCHER:
 20 Q. Okay. I am going to show you exhibit 9.
 21 (Handing exhibit number 9 to the
 22 witness.)
 23 A. Okay.
 24 Q. It is 1400?

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1 A. It is, appears to be the JHLICO companies
 2 at the end of July. Not to -- I know the
 3 look of these, since I see them daily, but
 4 if the latest one we have is in fact
 5 August, the chart will actually show us
 6 each of the periods prior to that. So,
 7 for example, we see in this exhibit 9 on
 8 page 1402, we see the current balance as
 9 being 1 billion 070 million.
 10 Q. Right.
 11 A. But if we were to go back to exhibit 7,
 12 which has the August date, and though the
 13 actual dollar figure is not represented,
 14 if you look at the chart on page 1394, you
 15 will see the representation of how the
 16 cash position has changed from July of '04
 17 through August of '05. Each of these
 18 exhibits shows the actual specific dollar
 19 amount on those days, but the relative
 20 changes in the cash level is evidenced in
 21 any of those graphs for that point in
 22 time.
 23
 24 THE WITNESS: I will be happy to

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1 keep looking at them. I see them daily.
 2 MR. SCHER: I am glad you like
 3 your work.
 4 (Laughter.)
 5 (John Hancock Cash Balances -
 6 JHFS/JHRECO, production number
 7 JH 01405 marked exhibit
 8 number 10 for identification.)
 9 BY MR. SCHER:
 10 Q. I show you JH 1405.
 11 (Handing exhibit number 10 to
 12 the witness.)
 13 A. Okay.
 14 Q. And what is this?
 15 A. This is the legal entity John Hancock
 16 Financial Services and the company
 17 JHRECO's cash balance as of those two
 18 points in time, and likewise, neither of
 19 those are segments which we allocate to.
 20 Those are simply legal entities of the
 21 corporation.
 22 (John Hancock Cash Balances -
 23 JHLICO, production numbers
 24 JH 01406 through 01411 marked

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1 exhibit number 11 for
 2 identification.)
 3 BY MR. SCHER:
 4 Q. I show you what I had marked as Uzdevinis
 5 exhibit 11, JH 1406 through 1411.
 6 (Handing exhibit number 11 to
 7 the witness.)
 8 Q. This looks like a duplicate?
 9 A. Yes. It looks like a duplicate of
 10 exhibit 4, but, at least on the surface.
 11 Q. Is it?
 12 A. It appears to be to me.
 13 Q. All right.
 14 (John Hancock Cash Balances -
 15 JHLICO, production numbers
 16 JH 01412 through 01417 marked
 17 exhibit number 12 for
 18 identification.)
 19 BY MR. SCHER:
 20 Q. I show you exhibit 12.
 21 (Handing exhibit number 12 to
 22 the witness.)
 23 A. This is through the end of August. This
 24 appears to be repetitive of exhibit 7, but

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1 I will turn page by page to be sure.
 2 (Pause.)
 3 (The witness viewing exhibit
 4 number 7 and exhibit number 12.)
 5 A. It is not, only with respect to the fact
 6 that this exhibit also includes the
 7 Variable Life Insurance Company and MIC.
 8 Q. Through August?
 9 A. Right. And that particular portion of it
 10 was exhibit 8.
 11 Q. Okay.
 12 A. So it does --
 13 Q. It is duplicative, at least in that part?
 14 A. Yes.
 15 (John Hancock Cash Balances -
 16 JHVLICO & MIC (formerly
 17 IPLICO), production numbers
 18 JH 01418 and 01420 marked
 19 exhibit number 13 for
 20 identification.)
 21 BY MR. SCHER:
 22 Q. And here is 13, which even my own
 23 untrained eye sees is highly likely to be
 24 duplicative, but maybe I am wrong. Here

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1 is Uzdevinis 13.
 2 (Handing exhibit number 13 to
 3 the witness.)
 4 Q. This is Bates stamped 1418 through 1420?
 5 A. Yes. Just in a different order.
 6 Q. The pages are in a different order?
 7 A. Yes. This is similar to exhibit 12, but
 8 the pages are in a different order and the
 9 format is slightly different on one of the
 10 pages to save paper, and print it all on
 11 one page.
 12 Q. Okay.
 13 A. We should have done that for all of our
 14 pages.
 15 Q. So with respect to those charts and
 16 graphs, some ending in July and some in
 17 August, there are charts and graphs for
 18 every day from, you know, from August 1st,
 19 2004, through to the present time; is that
 20 right?
 21 A. That is correct.
 22 Q. And in fact you receive such charts daily?
 23 A. Daily. Business days.
 24 Q. Okay. That's good. You said you didn't

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1 know who performed the calculation which
 2 resulted in the \$4.7 million figure. Can
 3 you tell me who you think prepared that?
 4 MR. POPEO: Objection.
 5 You can answer.
 6 A. It could have been the investment officer.
 7 It could have been the credit officer. It
 8 could have been a host of people.
 9 Q. Okay.
 10 A. I really don't --
 11 Q. Okay.
 12 A. -- have any idea who did prepare that.
 13 Q. Okay.
 14 MR. SCHER: Let me have a couple
 15 of minutes. I may be at the end.
 16 MR. POPEO: Okay.
 17 (Recess taken at 5:09 p.m.)
 18 (Recess ended at 5:11 p.m.)
 19 MR. SCHER: Mark this.
 20 (Plaintiff John Hancock Life
 21 Insurance Company's Response to
 22 Defendants' First Set of
 23 Interrogatories marked exhibit
 24 number 14 for identification.)

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1 BY MR. SCHER:
 2 Q. I show you what has been marked as
 3 exhibit 14.
 4 (Handing exhibit number 14 to
 5 the witness.)
 6 Q. That is a document entitled Plaintiff John
 7 Hancock Life Insurance Company's Response
 8 to Defendants' First Set of
 9 Interrogatories. Have you seen this
 10 document before today?
 11 A. I don't recall seeing this document.
 12 Q. On page 12, among others you are listed as
 13 a person who assisted in answering the
 14 interrogatories and in compiling
 15 documents. Can you tell me what role you
 16 played?
 17 MR. POPEO: Objection.
 18 You can answer the question.
 19 Just make sure that you don't disclose in
 20 the course of your answer any
 21 conversations that you had with me or
 22 others inside John Hancock or at Hancock
 23 legal office.
 24 A. I can tell you to the best of my knowledge

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1 what I did. That is I would have had
2 discussions with people as to what we
3 should be doing in terms of recouping
4 expenses, which as I said before I feel is
5 all the way down to the level of which
6 we're actually earning moneys, down to the
7 commercial paper level, if you will, as
8 well as telling people that lines of
9 business would be impacted since the
10 commitments are all assumed to close.

11 I would actually have to read
12 through this to find out what is fully in
13 here, but it would have been from a
14 portfolio management perspective, so that
15 somebody could understand what the
16 implication would be of a loan that was
17 committed to not in fact closing.

18 Q. Included in these answers, on the very
19 last page, which is Exhibit A, do you have
20 that in front of you?

21 A. I do.

22 Q. And is that the calculation, the lost
23 opportunity calculation, to which you made
24 reference in your earlier testimony?

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1 A. That is the calculation I made reference
2 to earlier.

3 Q. Can you tell me the source of the
4 information on this, the source of any of
5 the information on this?

6 A. Well, I didn't prepare it, so I can't tell
7 you the actual source of the information,
8 but information such as the targeted date
9 of closing and the maturity date and the
10 loan term and the loan amount should have
11 all come directly from the loan commitment
12 document, as would have what the payments
13 would have been, both the timing and the
14 amortization of the payments.

15 Presumably when this document
16 was put together somebody went to
17 Bloomberg or some other format to get the
18 then current ten-year treasury rate which
19 they converted to a discount rate, at
20 which point it is my assumption that this
21 present value is a calculated field using
22 that discount rate to indicate what the
23 sum total of the present value of this
24 loan is on that day's environment to the

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1 John Hancock, with the loss of interest
2 and opportunity here simply reflecting the
3 difference between the sum of those
4 present values and the original
5 anticipated loan amount of 32 million.

6 Q. And is it -- does it appear that the date
7 of the interest rate, today's ten-year
8 treasury rate -- sorry -- ten-year
9 treasury rate was August 1, '05?

10 MR. POPEO: Objection.

11 A. I cannot tell from this exhibit what is
12 today's ten-year treasury rate.

13 Q. Okay.

14 A. There is no date that I can find on this
15 exhibit, so I would not assume it to be
16 10-1 -- 8-1 by default, no.

17 Q. You made reference to the loan commitment
18 document. And is that Uzdevinis 3?

19 A. That would be the loan commitment
20 document. Yes.

21 Q. Okay.

22 MR. SCHER: Mark this.
23 (One-page memorandum dated
24 August 17, 2004, to Mr. Malik

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1 from Ms. Coyne, production
2 number JH 01174 marked exhibit
3 number 15 for identification.)

4 BY MR. SCHER:

5 Q. I show you what I have had marked
6 Uzdevinis 15.

7 (Handing exhibit number 15 to
8 the witness.)

9 Q. Can you tell me what this is?

10 A. It appears to be a memo that Tim Malik got
11 from Patty Coyne in August of 2004.

12 Q. Is it a form that John Hancock uses?

13 A. I'm not familiar with seeing this, but I
14 would not necessarily get all of the memos
15 that would go from a credit officer --
16 from one credit officer to another.

17 Q. Okay. So it is your testimony that you
18 hadn't seen this before today?

19 A. I had not seen this before today.

20 MR. SCHER: Well, I think I am
21 done.

22 (Whereupon, at 5:19 p.m., the
23 deposition was adjourned.)
24

Page 143

1 DEPONENT'S ERRATA SHEET
2 AND SIGNATURE INSTRUCTIONS
3 The original of the Errata Sheet
4 has been delivered to Paul D. Popeo, Esq.
5 When the Errata Sheet has been
6 completed by the deponent and signed, a
7 copy thereof should be delivered to each
8 party of record and the ORIGINAL delivered
9 to Howard D. Scher, Esq., to whom the
10 original deposition transcript was
11 delivered.

INSTRUCTIONS TO DEPONENT

15 After reading this volume of
your deposition, indicate any corrections
16 or changes to your testimony and the
reasons therefor on the Errata Sheet
17 supplied to you and sign it. DO NOT make
marks or notations on the transcript
18 volume itself.

20 REPLACE THIS PAGE OF THE TRANSCRIPT WITH
21 THE COMPLETED AND SIGNED ERRATA SHEET WHEN
22 RECEIVED.

1 CERTIFICATE
2 Commonwealth of Massachusetts
3 Plymouth, ss.

I, Judith McGovern Williams, a
Registered Professional Reporter and
Notary Public in and for the Commonwealth
of Massachusetts, do hereby certify:

That JOAN M. UZDAVINIS, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the said witness.

IN WITNESS WHEREOF, I have
hereunto set my hand this day of
 , 2006.

Judith McGovern Williams
Registered Professional Reporter
Certified Realtime Reporter
Certified LiveNote Reporter
Certified Shorthand Reporter No. 130993

My Commission expires:
April 2, 2010

Page 142

1 ATTACH TO DEPOSITION OF: JOAN M.
UZDAVINIS
2
3 CASE: JOHN HANCOCK INSURANCE COMPANY VS.
VESTMONT LIMITED PARTNERSHIP ET ALS

ERRATA SHEET

INSTRUCTIONS: After reading the transcript of your deposition, note any change or correction to your testimony and the reason therefor on this sheet. DO NOT make any marks or notations on the transcript volume itself. Sign and date this errata sheet (before a Notary Public, if required). Refer to Page 141 of the transcript for errata sheet distribution instructions.

	PAGE	LINE
11		

12	CHANGE:
13	REASON:
14	CHANGE:
15	REASON:
16	CHANGE:
17	REASON:
18	CHANGE:
	REASON:

19 I have read the foregoing transcript
20 of my testimony, and except for any
21 corrections or changes noted above, I
22 hereby subscribe to the transcript as an
accurate record of the statements made by
me.

JOAN M. UZDAVINIS

Denton, Brenda

From: Popeo, Paul
Sent: Wednesday, March 08, 2006 2:31 PM
To: Davis, Brian
Subject: FW: John Hancock v. Vestmont Limited Partnership

forgot to cc you.

Paul D. Popeo

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www.choate.com

-----Original Message-----

From: Popeo, Paul
Sent: Wednesday, March 08, 2006 2:23 PM
To: 'McCormick, Brian'
Subject: RE: John Hancock v. Vestmont Limited Partnership

Brian: Nectow will not testify as a corporate designee. Coyne will be the Hancock designee on topic #s 2, 5, 6, and will supplement the testimony already provided on topic # 3. Call if you have questions.

Also, by way of clarification, the final portion of topic #2 (last sentence) seeks a designee with respect to the "negotiation of the [terms and conditions of the Loan Application] between Defendants and John Hancock". You have already deposed Malik and Ferrie, the Hancock individuals who negotiated that document with the defendants. Please let me know if there are legitimate areas of inquiry on that subject on which you were not able to question those witnesses. If so, I am happy to speak with you and determine whether we can make another witness available - but I think you have already spoken with the most knowledgeable people.

Paul D. Popeo

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www.choate.com

-----Original Message-----

From: McCormick, Brian [<mailto:mccormickbj@bipc.com>]
Sent: Wednesday, March 08, 2006 1:47 PM

4/6/2006

To: Davis, Brian; rhillman@dwbboston.com; Popeo, Paul
Subject: John Hancock v. Vestmont Limited Partnership

Brian,

Please see the attached letter and Amended Notice of Depositions.

Brian J. McCormick, Jr.
Buchanan Ingersoll PC
1835 Market Street, 14th Floor
Philadelphia, PA 19103

215-665-3957 (direct)
215-687-7965 (cell)
215-665-8760 (fax)
mccormickbj@bipc.com (e-mail)

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4/6/2006

Wilson, Sarah

From: McCormick, Brian [mccormickbj@bipc.com]
Sent: Wednesday, March 15, 2006 4:36 PM
To: Popeo, Paul
Subject: RE: John Hancock v. Vesterra

Paul,

To confirm our conversation.

When Brian canceled Ivor Thomas for the 21st last week, I told him we could not take Mr. Thomas's deposition on Wednesday, (3/22), because Howard and I have a mediation in Detroit, Michigan that day. Brian was going to get dates from Mr. Thomas and get back to me. I had not heard back from Brian yet.

Please provide me with some available dates for Mr. Thomas.

I also want to discuss how your proposal regarding post-designating portions of Mr. Malik's deposition as a 30(b)(6) witness would work.

Brian

Brian J. McCormick, Jr.
Buchanan Ingersoll PC
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Philadelphia, PA 19103

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215-687-7965 (cell)
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mccormickbj@bipc.com (e-mail)

From: Popeo, Paul [mailto:PPopeo@choate.com]
Sent: Wednesday, March 15, 2006 4:24 PM
To: McCormick, Brian
Subject: RE: John Hancock v. Vesterra

Thanks. You are doing Thomas the morning of the 22d also, right?

Paul D. Popeo

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Two International Place
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4/5/06

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-----Original Message-----

From: McCormick, Brian [mailto:mccormickbj@bipc.com]

Sent: Wednesday, March 15, 2006 3:53 PM

To: Popeo, Paul

Subject: John Hancock v. Vesterra

Paul,

This will confirm our email exchange of yesterday. We will conduct Ms. Uzdavinis's deposition on Tuesday, March 21, after the ADR. Please ask her to be at Rob Hillman's offices at 1 p.m.

Brian J. McCormick, Jr.

Buchanan Ingersoll PC

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CHOATE HALL & STEWART LLP

Paul D. Popeo
(617) 248-4074
ppopeo@choate.com

March 30, 2006

BY ELECTRONIC MAIL AND REGULAR MAIL

Howard Scher, Esq.
Brian J. McCormick, Jr., Esq.
Buchanan Ingersoll PC
1835 Market Street, 14th Floor
Philadelphia, PA 19103-2985

RE: John Hancock Life Ins. Co. v. Vestmont Limited Partnership, et al.
C.A. No. 05-11614-WGY

Dear Howard and Brian:

I write concerning the Motion to Compel you filed last night, and in light of the Judge's comments during our in-chambers pretrial conference this afternoon.

As Brian Davis and I mentioned to you after the conference, if it is possible to do so we would like to resolve any remaining discovery concerns which you have cooperatively. Toward that end I ask that you please identify for us any 30(b)(6) subject area(s) on which you believe you are missing information, or any particular subject area(s) on which the testimony you received was inadequate or incomplete.

Once we have received this information from you we will promptly identify an appropriate witness or witnesses to provide you with additional deposition testimony. I remind you also of our previous offer of several weeks ago to designate portions of the depositions of Timothy Malik and Jonathan Ferry as responsive to your 30(b)(6) notice, and binding upon Hancock as though the designations had been made prior to the depositions. Please let me know if that approach is of interest to you.

If you are available, I would like to set up a call to discuss this matter on April 3, 2006 (this Monday) at 10:00 a.m. Please let me know at your earliest convenience.

Sincerely,


Paul D. Popeo

PDP/slw:4065660

Davis, Brian

From: Scher, Howard [scherhd@bipc.com]
Sent: Wednesday, April 05, 2006 9:16 AM
To: Popeo, Paul; Davis, Brian
Cc: Ross, C. Randolph; McCormick, Brian; Pearce, Cheri
Subject: Motion for Reconsideration

Paul,

I have your letter of March 30th, and am following up on our discussions last week and Monday. I apologize for not being available to talk but a personal emergency has taken me out of the office for the week.

We agree that the parties should continue to work together to avoid any further discovery disputes similar to the one that caused us to file our Motion to Compel.

However, Judge Young has already ruled that John Hancock improperly prepared its Rule 30(b)(6) designees and that John Hancock is now "precluded from proffering any new evidence on the designated 30(b)(6) topics not testified to in those depositions." It is not our burden to remedy that situation. Thus, rather than identify areas where we believe information was missing or where testimony was incomplete (we think that these are self-evident from the depositions), we believe it is your burden to supplement, if possible and timely, your witnesses' deficient testimony. We are not agreeing that we will permit such a supplement at this late date, but would be agreeable to reviewing such an attempt.

We have no intention of bypassing your offer to designate retrospectively the portions of Malik and Ferrie which you wish to make binding on the corporation. However in no way will we agree in the abstract that such designations satisfy your obligations.

We will undertake to review promptly any proposed designations we receive from you, and will get back you within a few days with our response to any such proposal.

Howard

Howard D. Scher
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